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(1)

Supreme Court
FILED

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No. ____

In the Supreme Court of the United States

JEFFREY M. GRAY,

Petitioner,

v.

LISA A. SORENSON,

Respondent.

On Petition for a Writ of Certiorari to the Maine Supreme Judicial Court

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This Court has said in *Thompson v. Thompson*, 484 U.S. 174 (1988) that it is generally presumed that States and state courts are willing, able and will follow the federally mandated requirements of Title 28 U.S.C. §1738A Parental Kidnapping Prevention Act of 1980, (PKPA or Act) Full Faith and Credit Given to Child Custody Determinations.

1. Whether the Maine Supreme Judicial Court erred that it complied with its federal duty to follow Title 28 U.S.C. §1738A Parental Kidnapping Prevention Act of 1980 (Act) as required by the Full Faith and Credit Clause of Article IV §1 and the Supremacy Clause of Article VI of the Constitution of the United States when the State of Maine courts were unwilling to recognize and enforce a custody decree entered by its sister State of New Hampshire while proceedings were still pending in that state and instead exercised concurrent jurisdiction over the custody dispute and entered an ex parte custody decree that effectively "overturned" the same custody decree that was "reversed" by Supreme Court of New Hampshire before both natural non-resident parents were given notice and opportunity to be heard?

2. Whether the Maine Supreme Judicial Court erred in *In RE: Jonathon G. et al* in holding that no error of law was committed when notice to the two out-of-state natural parents was waived by the court thus not providing them an opportunity to be heard and then entered a custody decree that deprived non-resident parents custody of their children violate the parents procedural due process rights protected by the Due Process Clause of the Fourteenth Amendment and violate their fundamental "liberty interest" of a natural parent[s] right to care, custody and control over their

children protected under the substantive component of the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States?

In *DeBoer v. DeBoer*, 509 U.S. 1301 (1993) Justice Stevens held that "[C]ourts are not free to take children from their parents simply by deciding another home appears more advantageous" and "[n]or does federal law authorizes unrelated persons to retain custody of a child whose natural parents have not been found unfit simply because they may be better able to provide for a children's future and their education."

3. Whether Maine's Revised Statute 18-A M.R.S.A. §5-206. which allows "any person" or persons be appointed as a guardian over a natural parents' children and retain custody without a finding of parental unfitness and 18-A M.R.S.A § 5-204(c) which allows the appointment of a guardian without the consent of the natural parents regardless of the level of jeopardy to the child which would rise to the level of parental unfitness simply because the court may find that an undefined and unconstitutionally vague "intolerable living situation" exists and that it is in the best interest of the child to appoint a guardian violate the fundamental "liberty interests" of a natural parents right to make decisions for, care, custody and control over their children protected by the substantive component of the Due Process Clause of the Fourteenth Amendment of the United State Constitution and therefore unconstitutional?

LIST OF PARTIES

RULE 14.1(b) STATEMENT

A list of all parties to all the proceedings in the Supreme Court of New Hampshire whose judgments are the subject of this petition are as follows;

Docket No. Yor-06-320
In RE: Jonathon Gray and Leeanna Gray

Petitioner-Appellant, Petitioner: Jeffrey M. Gray, Father
Respondent-Appellee, Respondent: Lisa A. Sorenson

RULE 29.4(c) STATEMENT NOTIFICATION OF STATE ATTORNEY GENERAL

The constitutionality of a statute of the State of Maine has been drawn into question as being repugnant to the Constitution of the United States of America and is unconstitutional. Neither the State of Maine, nor any agency officer, or employee thereof is a party. Title 28 U.S.C. § 2403(b) may apply and the initial document filed in this Court has been served upon the State of Maine Attorney General who is Mr. Steven Rowe, Office of the Attorney General, 6 House Station, Augusta, Maine 04333.

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No._____

In The
Supreme Court of the United States
OCTOBER TERM, 2006

JEFFREY M. GRAY,
Petitioner,

v.

LISA A. SORENSON,
Respondent.

PETITIONER'S PRAYER FOR A WRIT OF CERTIORARI

The Petitioner, JEFFREY M. GRAY, respectfully prays that a writ of certiorari issue to review the judgment of the Maine Supreme Judicial Court entered in the entitled proceeding Docket No. Yor-06-320 IN RE: Jonathon G. et al. on January 9, 2007.

OPINIONS BELOW

The January 9, 2007 Decision of the Maine Supreme Judicial Court in Docket No. Yor-06-320 IN RE: Jonathon G. et al. attached at Appendix A, page 1a is not reported.

STATEMENT OF JURISDICTION

The Petitioner, Jeffrey M. Gray invoked subject matter jurisdiction under Federal Public Law Title 28 U.S.C. §1738A Parental Kidnapping Prevention Act of 1980 under its heading Full Faith and Credit Given to Child Custody Determinations; the Full Faith and Credit provision of Article IV §1 of the United States Constitution; the Laws of the United States under the Supremacy Clause of Article VI §2 of the United States Constitution; his fundamental "liberty interest" of a natural parent in the care, custody and management of his children protected by the substantive component of the Due Process Clause of the Fourteenth Amendment of the United States Constitution; his procedural due process rights protected by the Procedural Due Process Clause of the Fourteenth Amendment of the United States Constitution, thereby invoking federal question jurisdiction.

On January 27, 2006 the Opinion of the Supreme Court of New Hampshire in Case No. 2004-0738 In the Matter of Jeffrey Gray and Janette Gray GRANTED Jeffrey Gray's and Janette Gray's appeal when the Supreme Court struck down and reversed a lower district court's child custody decree that granted physical custody of Mr. Gray's and the childrens' mother, Janette Gray's two biological children to Lisa Sorenson of the State of Maine, a third party intervener in the parents New Hampshire divorce matter. The decision of the Supreme Court of New Hampshire resulted in favor of the childrens' natural parents, Jeffrey Gray and Janette Gray

On January 31, 2006 Lisa Sorenson immediately forum shopped the courts of the State of Maine requesting the same child custody determination be "more favorable" than having being "reversed" four days earlier in New Hampshire. On February 7, 2006 the State of Maine York County Probate

Court "overturned" the judgment of the Supreme Court of New Hampshire's "reversal" of the custody decree to Lisa Sorenson by entering an ex parte temporary guardianship custody decree "on the bench" in her favor and issued its written order dated February 10, 2006. On May 2, 2006 the York County Probate Court entered a permanent guardianship custody decree in favor of Lisa Sorenson retaining custody of Mr. Gray's and the childrens' mother, Janette Gray's children .

The June 13, 2006 Order of the Supreme Court of New Hampshire in Case No. 2006-0349 Petition of Jeffrey Gray GRANTED Mr. Gray's Petition for a Writ of Certiorari. On November 28, 2006 the Supreme Court of New Hampshire entered a 3JX (Three Judge Expedited) Order that DENIED Mr. Gray's writ of certiorari. The jurisdiction of this Court is thus invoked under 28 U.S.C. §1257(a) to review all the judgments of the Supreme Court of New Hampshire under a separate petition for a writ of certiorari to the Supreme Court of New Hampshire filed simultaneously with this petition. That petition has been timely filed under 28 U.S.C. § 2101(c) and Supreme Court Rule 13.5 because an application for an extension of time within which to file a petition for a writ of certiorari to the Supreme Court of New Hampshire in the entitled case Jeffrey Gray v. Lisa Sorenson, Application No. 06A820 was presented to Justice Souter, who on February 27, 2007 extended the time to and including April 27, 2007.

On May 18, 2006 Mr. Gray appealed to the highest court of the State of Maine, the Maine Supreme Judicial Court. The judgment of the Maine Supreme Judicial Court in Docket No. Yor-06-320 In RE: Jonathon Gray et al. was entered on January 9, 2007 which DENIED Mr. Gray's appeal thus created the current intractable impasse between the two states of New Hampshire and Maine regarding Lisa

Sorenson's custody of Jeffrey Gray and Janette Gray's children. The jurisdiction of this Court is thus invoked under 28 U.S.C. §1257(a) to review the judgment of the Maine Supreme Judicial Court.

This petition is timely filed under 28 U.S.C. § 2101(c) and Supreme Court Rule 13.5 because an application for an extension of time within which to file a petition for a writ of certiorari to the Maine Supreme Judicial Court in the entitled case Jeffrey Gray v. Lisa Sorenson, Application No. 06A821 was presented to Justice Souter, who on February 27, 2007 extended the time to and including April 27, 2007.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTITUTION OF THE UNITIED STATES OF AMERICA-1787

ARTICLE. IV. Section. 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

ARTICLE. IV. Section. 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

ARTICLE. VI Clause. 2. This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound

thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

BILL OF RIGHTS ARTICLES OF AMENDMENTS TO THE CONSTITUTION OF THE UNITIED STATES OF AMERICA-1787

The Fourteenth Amendment

ARTICLE. [XIV.]. Section. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

FEDERAL PUBLIC LAW BY AN ACT OF CONGRESS OF THE UNITED STATES OF AMERICA

Title 28 U.S.C. §1738. Full Faith and Credit
Title 28 U.S.C. §1738A. Parental Kidnapping Prevention Act of 1980 (PKPA or Act) Full Faith and Credit Given To Child Custody Determinations

The full text of the PKPA of is attached at Appendix C, Page 95a & 96a.

MAINE REVISED STATUTES ANNOTATED (M.R.S.A.)

The full text of the relevant State of Maine Statutes state statute law is attached at Appendix C, Page 103a.

MAINE COURT RULES OF PROBATE PROCEDURE

The full text of the relevant State of Maine Rules of Probate Procedure is attached at Appendix C, Page 117a.

STATE OF NEW HAMPSHIRE REVISED STATUTES ANNOTATED (NH RSA)

The full text of the relevant State of New Hampshire Revised Statutes Annotated state statute law is attached at Appendix C, Page 123a.

STATEMENT OF THE CASE

This case arises out of child custody forum shopping of state courts that resulted in the entry of a conflicting state custody decree by Maine with its sister State of New Hampshire. Jeffrey M. Gray and Janette L. Gray were married and two children were born of their marriage, Jonathon M. Gray, and Leeanna E. Gray. Both children were born in the State of New Hampshire. Jeffrey and Janette Gray and their family were residents and citizens of the State of New Hampshire. In September of 1999 Jeffrey commenced an action in Rockingham County Salem District Court Family Division at Salem (Salem District Court) in the State of New Hampshire seeking final dissolution of his marriage to Janette and custody of their minor children. The Court entered the matter under Docket No. 1999-M-0183 In the Matter of Jeffrey M. Gray and Janette L. Gray. In October, 1999 the Salem District Court issued a Temporary Decree that awarded Jeffrey sole physical custody of the minor children. (*See* App. D, Page 79a). Jeffrey raised and cared for the children in Salem, New Hampshire for the next three years while Janette resided in Massachusetts.

Jeffrey and Janette were divorced on August 7, 2002. (*See* App. D, Page 166a, 170a). The matter became final on September 10, 2002. The Salem District Court's final Decree of Divorce included Mr. Gray's Proposed Finding of Fact and Ruling of Law dated August 7, 2002 granted in part. (*See* App. D, Page 169a, 170a). Mrs. Gray was awarded sole custody of the children subject to Mr. Gray's visitation with the children. The children then relocated to Massachusetts where Janette continued to reside. The Court decreed in the divorce decree pursuant to New Hampshire Revised Statutes Annotated (NH RSA) Uniform Child Custody Jurisdiction Act (UCCJA) RSA 458-A:3, I(b), New Hampshire shall be deemed the children's "home" state for purposes of any litigation on custody or visitation. (*See* App. D, Page 167a). The Court made a ruling of law in the divorce decree; Ruling of Law No. 59, "New Hampshire is the children's home state within the meaning of RSA 458-A:3 (New Hampshire's version of the Uniform Child Custody Jurisdiction Act) and 28 U.S.C. §1738(b)(4), the Federal Parental Kidnapping Prevention Act." (*See* App. D, Page 178a).

The Salem District Court subsequently modified the Decree of Divorce when it granted Mr. Gray and Ms. Gray joint legal of the children. On July 30, 2004 Jeffrey and Janette ended their dispute and entered into a written "Agreement" to share joint physical and legal custody of the children who would resume residing with Mr. Gray. The Salem District Court entered an order dated July 30, 2004 that modified the Decree of Divorce pursuant to the parents' "Agreement." (*See* App. B, Page 90a). On August 26, 2004 the parents amended their prior agreement to reflect that Janette was going not going to relocate to New Hampshire; the parents executed a written "Stipulation" and the Salem District Court Order modified the Decree of Divorce

pursuant to the parents "Stipulation." (*See* App. B, Page 82a). All other provisions of the July 30th order which were not inconsistent with the modifications remained in full force and effect. (*See* App. B, Page 86a).

On August 28th, 2004 Mr. Gray obtained custody of his children pursuant to the parents July 30th, 2004 "Agreement". (*See* App. B, Page 90a, 92a). The children began school on September 1, 2004 in Salem, New Hampshire; Mr. Gray was employed as a civil engineer, was actively searching for a more permanent home and was caring for his children as a fit parent.

On October 8, 2004 the Salem District Court, *sue sponte* upon its own motion, held a review hearing in the divorce matter. Mr. Gray and Ms. Gray were in attendance, both represented by their counsel and also an unwelcome intervener, Lisa Sorenson of the State of Maine. The court took exception to the children living a hotel despite Mr. Gray adequately caring for his children as a fit parent. The October 15, 2004 Order of the Salem District Court entered an order that removed the children from their natural parents who had not been judicially found unfit and entered a custody determination that placed the parents' children with Lisa Sorenson. (*See* App. D, Page 163a). The court denied both Mr. Gray and Ms. Gray an opportunity to heard on the matter despite the parents repeated requests to be heard and their repeated requests to the court to reconsider. The hearing lasted only seventeen minutes. (*See* App. D, Page 151a, 152a).

Jeffrey and Janette appealed to the Supreme Court of New Hampshire, they requested that the lower district courts order custody decree to Lisa Sorenson be reversed and vacated and that their children be returned to the parents

custody. The matter was taken up for appellate review and entered into the Courts docket as "Case No. 2004-0738 In the Matter of Jeffrey Gray and Janette Gray." The parents argued the District Court Order was wrong and it violated the parents fundamental "liberty interest" of natural parents in the care, custody and management of their children protected by the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States and as in this Courts case in *Troxel v. Granville*, 530 U.S. 57 (2000). Mr. Gray and Ms. Gray also argued that the court violated the parents procedural due process rights which is protected by the Procedural Due Process Clause of the Fourteenth Amendment of the Constitution of the United States when on October 8th, 2004 the trial court refused the parents an opportunity to heard on the matter despite the parents repeated requests to be heard and their repeated requests to the court to reconsider and then entered an order that deprived the parents of custody of their children. (*See* App. D, Page 148a, 152a).

On March 15, 2005 the Salem District Court entered an Order that the issues of placement of the parents children and child support ordered to Lisa Sorenson have been appealed to the New Hampshire Supreme Court and there has been no stay of those orders, consequently, those orders are temporary orders and were reaffirmed by the Court. (*See* App. D, Page 161a).

On February 22, 2005 Mr. Gray registered his and Ms. Gray's New Hampshire child custody orders in the State of Maine where the children resided pending the parents appeal in New Hampshire. Mr. Gray filed three separate "State of Maine Affidavit And Request For Registration Of A Foreign Order" in the Biddeford District Court in Biddeford Maine which entered the registrations under Docket No. BID-FM-

05-89 Jeffrey M. Gray v. Janette L. Gray pursuant to Maine's Uniform Child Custody Jurisdiction and Enforcement Act, 19-A M.R.S.A. § 1731et seq. Each child custody order registered was authenticated, certified, signed and sealed by the Clerk of the Salem District Court of New Hampshire. The registered orders were the October 15th, 2004 order in favor of Lisa Sorenson on appeal to the Supreme Court of New Hampshire, (*See* App. B, Page 72a), and Mr. Gray's own child custody order[s] in the parents Decree of Divorce dated July 30th, 2004 and August 26, 2004, both of which had not been modified or on appeal. (*See* App. B, Page 79a and 87a). On May 4, 2005 the Biddeford District Court issued three separate "Notices of Registration" for each of the three child custody orders Mr. Gray registered stating that pursuant to 19-A M.R.S.A. § 1765 of the Uniform Child Custody Jurisdiction and Enforcement Act the New Hampshire child custody orders were registered as of February 22, 2005. (*See* App. B, Page 65a, 67a and 69a). Lisa Sorenson was notified by the Biddeford District Court because she had physical custody of the children and it was required by Maine state law, Mr. Gray requested the Court to notify her which they did. (*See* App. B, Page 71a). Lisa Sorenson did not file any request for a hearing to contest the validity of the registered order and resulted in confirmation of the order by operation of law and precludes further contest with respect to any matter that could be asserted pursuant to Maine Uniform Child Custody Jurisdiction and Enforcement Act 19-A M.R.S.A. §1765(*See* App. B, Page 65a, 67a, 69a, and App. C, 115a-117a).

The July 8, 2005 Order of the Supreme Court of New Hampshire requested the Administrative Advocacy Clinic at Franklin Pierce Law Center to file an amicus curiae brief in the parents appeal to address the issue of applicability and effect of this Courts case in *Troxel v. Granville*, 530 U.S. 57

(2000). (*See* App. D, Page 152a). On August 8, 2005 Mary Pilkington-Casey, Esq. filed a brief as amicus curiae. (*See* App. D, Page 148a, 152a). Mr. Gray filed a reply brief to the brief of amicus curiae. (*See* App. D, Page 148a). The August 25, 2005 Order of the Supreme Court of New Hampshire allowed Lisa Sorenson to file a brief on the issues raised in the appeal. (*See* App. D, Page 159a). Lisa Sorenson filed a brief. (*See* App. D, Page 147a, 152a). On September 29, 2005 the Supreme Court of New Hampshire heard oral argument from Mr. Gray. (*See* App. D, Page 148a). On December 5, 2006 the Salem District Court issued a "Notice of Hearing – Marital" by Order of the Family Division for a scheduled "Review Hearing" on March 27, 2006, Lisa Sorenson of the State of Maine was notified of the pending hearing in New Hampshire. (*See* App. D, Page 157a).

On January 27, 2006 the Supreme Court of New Hampshire issued its judgment by written Opinion. (*See* App. D, Page 147a). The Court rejected the argument of amicus curiae that the trial court's custody determination comports with this Courts case in *Troxel v. Granville*, 530 U.S. 57 (2000) and rejected Lisa Sorenson's argument urging the Supreme Court of New Hampshire to uphold the trial courts determination in her favor, arguing that the children were in danger if left in the care of their parents. (*See* App. D, Page 152a). Neither parent had been found to be unfit from the Opinion. The Supreme Court made a finding that the case below was a divorce proceeding between two parents "who had not been found unfit." (*See* App. D, Page 155a). The Court reversed the trial court's custody determination to Lisa Sorenson and remanded the case to the trial court for further proceedings consistent with the Opinion. (*See* App. D, Page 148a, 155a, 156a). The Supreme Court further held that "[w]e reach the same result under the Federal Constitution" and adjudged in favor of the

natural parents, Jeffrey Gray and Janette Gray. (*See* App. D, Page 155a). The Opinion was subject to a 10-day period for motions for rehearing. On January 27, 2006 the Supreme Court of New Hampshire entered an Order that dismissed Mr. Gray's pending motions. (*See* App. D, Page 145a).On January 27, 2006 Mr. Gray, through his New Hampshire counsel, Ms. Paula J. Werme, filed in the Salem District Court a motion requesting the return of his children to his custody based on the Supreme Court of New Hampshire's judgment. (*See* App. D, Page 140a). Upon that motion, on January 30, 2006 the Salem District Court entered an Order that the matter shall be scheduled for an appropriate hearing after the court received the certified Order from the New Hampshire Supreme Court. (*See* App. D, Page 139a).

On January 31, 2006 Lisa Sorenson forum shopped the courts of the State of Maine by filing an ex parte petition for temporary and permanent guardianship over Mr. Gray's and the childrens' mother, Janette Gray's children in the York County Probate Court (Probate Court) in Alfred, Maine. Lisa Sorenson made allegations in her petition that both parents, Mr. Gray and Ms. Gray were found unfit by the New Hampshire courts and abused their children and requested the same child custody determination be "more favorable" to her than that of being "reversed" four days earlier by the Supreme Court of New Hampshire. Her Maine petition was filed while proceedings in New Hampshire were pending; Mr. Gray's January 27th, 2006 motion in the Salem District Court for return of his children in the Salem District Court, the Salem District Courts January 30th, 2006 Order ordering that a hearing in the matter will be scheduled as soon as they receive the certified mandate from the Supreme Court of New Hampshire. Lisa Sorenson also filed her Maine petition while the time for filing post-opinion motions was tolling in the Supreme Court of New Hampshire and

without filing any post-opinion motions. Lisa Sorenson failed to notify either the Supreme Court of New Hampshire or the Salem District Court of the Maine court proceedings as required by New Hampshire state law. On February 7, 2007 the York County Probate Court held an expedited hearing on Lisa Sorenson's petition. The parents were not present; neither parent received any notice of the hearing. The Probate Court (Judge Robert M.A. Nadeau) dictated an immediate "on the bench" Ex Parte Order of Temporary Guardianship custody decree "in favor" of Lisa Sorenson with full knowledge of the Supreme Court of New Hampshire's judgment four days earlier. On February 10, 2006 the Clerk of the Probate Court issued the courts written Ex Parte Order on Temporary Guardianship and scheduled a hearing on the matter on April 19, 2006. (*See* App. B, Pages 36a). The Official Transcripts of the February 7, 2006 expedited hearing in the York County Probate Court is attached in Appendix B. (*See* App. B, Pages 40a thru 64a).

On February 13, 2006 the Clerk of the Supreme Court of New Hampshire issued the Opinion Certified as Mandate to the Salem District Court. (*See* App. D, Page 147a). On or about February 16, 2007 Mr. Gray learned about the State of Maine court proceedings and the Probate Court's Ex Parte Order on Temporary Guardianship. Mr. Gray immediately retained a Maine attorney, Mr. Thomas Greco. On February 23, 2006 Lisa Sorenson filed a petition in the Salem District Court in New Hampshire to register the Maine Probate guardianship custody decree in the State of New Hampshire. The Salem District Court entered the matter under two separate dockets, Docket No. 2006-G-0010 In the Matter of Jonathon Gray and Docket No. 2006-G-0011 In the Matter of Leeanna Gray and Mr. Gray, through his New Hampshire counsel, Paula J. Werme filed a written objection in the Salem District Court.

The Salem District Court refused to schedule the remand hearing Ordered by the Supreme Court of New Hampshire's Mandate dated February 13, 2006, instead, on March 1, 2006 the Salem District Court *sue sponte* entered an Order that the Salem District Court "defers" jurisdiction to the State of Maine." (*See* App. D, Page 138a). Mr. Gray, through counsel filed an objection to the Salem District Court's March 1st, 2006 order. On February 28th, 2006 Mr. Gray, through his Maine counsel, filed a motion to vacate the guardianship based on lack of subject matter and personal jurisdiction under the 28 U.S.C. §1738A Parental Kidnapping Prevention Act. (*See* App. B, Page 25a). Mr. Gray also filed an affidavit in support of his motion. (*See* App. B, Page 32a). The Probate Court denied Mr. Gray's request on March 22, 2006. (*See* App. B, Page 31a).

On March 31, 2006 Mr. Gray, through his New Hampshire counsel filed a Motion to Show Cause in the Supreme Court of New Hampshire. On April 3, 2006 the Supreme Court of New Hampshire entered an Order that on February 13, 2006 the clerk of the Supreme Court issued the mandate in the case returning jurisdiction of the matter to the Salem Family Division and that the father's ex-parte motion for enforcement of the custody decree is denied without prejudice to the father seeking relief in the family division and the father's motion to show cause is denied." (*See* App. D, Page 137a).

On April 7, 2006 Mr. Gray filed an Ex Parte Motion for Enforcement of his registered July 30th and August 26th, 2004 New Hampshire custody degrees in the Biddeford District Court in Biddeford, Maine. The Court (Judge Christine Foster) granted Mr. Gray's motion and Ordered "after having read the Probate Courts order," "believe that it was unenforceable against Mr. Gray" and that "further

proceedings in this matter should be concluded in the State of New Hampshire." (*See* App. B, Page 23a). On April 10, 2007 Mr. Gray executed the Enforcement Order and obtained custody of his children, Jonathon and Leeanna Gray in Maine. The children returned with their father to their family home in New Hampshire. Lisa Sorenson immediately reported Mr. Gray to the State of New Hampshire Division of Child Youth and Family Services (DCYF) claiming Mr. Gray abused his children. Mr. Daryl Bazydlo, Child Protective Service Worker contacted and spoke to Mr. Gray who cooperated with the investigation. Mr. Bazydlo also spoke to both children at their school; he investigated all of Lisa Sorenson's allegations.

Lisa Sorenson filed a motion for reconsideration in the Maine Biddeford District Court requesting that the court vacate its enforcement order. On April 11, 2006 Judge Robert M.A. Nadeau of the Maine Probate Court sent a letter to Judge Christine Foster of the Maine Biddeford District questioning Judge Foster's authority and asserting that he had exclusive jurisdiction over the custody of the children in his court. (*See* App. B, Page 15a, 19a). On April 18, 2006 the Salem District Court issued a Notice of Hearing setting May 11, 2006 to hear Mr. Gray's objection to Lisa Sorenson's petition to register her Maine guardianship orders in New Hampshire. On April 19, 2006 the Probate Court held "[t]he review hearing in this matter." (*See* App. B, Page 14a). On April 25, 2004 the Probate court issued a "Report of UCCJA Conference" asserting that Judge Nadeau had a 30-minute telephonic conference with Martial Master Bruce Dalpra of the Salem District Court on April 24, 2006. (*See* App. B, Page 14a). On April 25, 2006 Judge Foster held a hearing on Lisa Sorenson's motion for reconsider to vacate Mr. Gray's enforcement of order; Judge Foster reviewed the UCCJA report from the Probate Court. Mr. Gray was

represented by his New Hampshire counsel, Paula J. Werme. (*See* App. B, Page 15a). On April 27, 2006 Judge Foster of the Biddeford District Court entered an order that stated "[i]t remains concerned about the lack of actual notice provided to Mr. Gray in regard to the guardianship hearing conducted in the York County Probate Court." (*See* App. B, Page 12a). The Court granted Lisa Sorenson's Motion for Reconsideration and vacated its Ex Parte Order of April 7, 2006 which had already been executed by Mr. Gray on April 10. 2006 asserting the New Hampshire Orders which Mr. Gray sought to be registered in Maine had not been registered. (*See* App. B, Page 11a).

On May 1, 2006 Mr. Gray brought Jonathon and Leeanna to school that morning, he expected to pick up his children in the afternoon after school just like any other parent in the United States. At 10:00 a.m. that morning Lisa Sorenson went to the Salem District Court and filed an "Ex Parte "Emergency" Motion" for enforcement of her Maine guardianship custody decree requesting immediate custody of Mr. Gray and Ms. Gray's children. The Salem District court held an immediate ex parte hearing but gave no notice or opportunity to be heard either Mr. Gray or Ms. Gray. The Salem District Court then entered an "Order On Ex Parte Motion" dated May 1, 2006 which granted Lisa Sorenson's "emergency" motion. (*See* App. D, Page 135a). Mr. Gray was unaware that the Biddeford District Court had vacated its April 7th Enforcement Order. Lisa Sorenson had received that order and filed it with her "emergency" motion. Mr. Gray expected his children to be at the school when he arrived at 3:00 p.m. Instead he found his children missing, they were gone. On May 1, 2006 the Salem District Court also issued a Notice of Hearing "cancelling" the scheduled May 11, 2006 hearing on the merits of Lisa Sorenson's Petition to Register Foreign Order, effectively denying Mr.

Gray and Ms. Gray's the opportunity to be heard before the Court on May 11, 2006 on their objection to Lisa Sorenson's petition to register her foreign orders, thereby depriving the parents of custody of their children. (*See* App. D, Page 135a).

On May 2, 2006 the Maine Probate Court, on the first day Jonathon and Leeanna Gray were back in the State of Maine, granted Lisa Sorenson's pending petition for permanent guardianship by entering an "Order On Petition For Appointment Of Guardianship of Minor Alleging Intolerable Living Situation." (*See* App. B, Page 8a). There was only two hearings in the Probate Court, the initial February 7th, 2006 expedited hearing and the "as represented at the "review hearing" in this matter on April 19, 2006" reported by the Probated Court's "Report of UCCJA Conference dated April 25, 2006. (*See* App. B, Page 14a). There was never any "final hearing" as asserted by the Probate Court's May 2nd, 2006 order. The parents were never given "proper notice" and opportunity to be heard over any "final hearing." (*See* App. B, Page 9a,). On May 2, 2006 the Maine Probate Court also entered an "Appointment of Guardian of Minor" for each of Mr. Gray and Ms. Gray's children appointing Lisa Sorenson as "full guardian" who could retain custody. (*See* App. B, Page 5a). On May 18, 2006 Mr. Gray appealed the Probate Courts guardianship custody decree[s] to the Maine Supreme Judicial Court asserting Maine violated the PKPA, Maine's lack of subject matter and personal jurisdiction and procedural due process was denied. (*See* App. A, Page 3a).

On June 5, 2006, the State of New Hampshire Division of Child Youth and Family Services (DCYF), Mr. Daryl Bazydlo, Child Protective Service Worker conducted an official investigation into all of Lisa Sorenson's allegations

that Mr. Gray and Ms. Gray abused their children. Mr. Bazydlo went to their New Hampshire school and spoke directly with Jonathon and Leeanna with school officials who were present at the interview and later with Mr. Gray. On June 5, 2006 the State of New Hampshire DCYF stated that their assessment of Mr. Gray's family was complete and Lisa Sorenson's reported determinations that Mr. Gray and Ms. Gray had abused and neglected their children were UNFOUNDED and made no finding that either Mr. Gray or the children's mother Janette Gray was an unfit parent. (*See* App. D, Page 134a).

On January 9, 2007 the Maine Supreme Judicial Court denied Mr. Gray's appeal asserting the Maine complied with the requirements of federal public law 28 U.S.C. §1738A Parental Kidnapping Prevention Act of 1980 thus creating the current intractable impasse between New Hampshire and Maine concerning Lisa Sorenson's custody of Jeffrey Gray and Janette Gray's children. (*See* App. A, Page 1a).

REASONS FOR GRANTING THE PETITON

I. THE FEDERAL QUESTION.

In *Thompson v. Thompson* this Court held that "The Parental Kidnapping Prevention Act (PKPA or Act) imposes a duty on the states to enforce a child custody determination entered by a court of a sister State if the determination is consistent with the provisions of the Act."[1] "In order for a state's court's custody decree to be consistent with the provisions of the Act, the State must have jurisdiction under its own law and one of five conditions set out 1738A(c)(2)

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1 484 U.S. 174, 176 (1988).

must be met."[2] "Briefly put, these conditions authorize the state court to enter a custody decree if the child's home is or recently has been in the State, if the child has no home State and it would be in the child's best interest for the State to assume jurisdiction, or if the child is present in the State and has been abandoned or abused. Once a State exercises jurisdiction consistently with the provisions of the Act, no other State may exercise concurrent jurisdiction over the custody dispute, 1738A(g), even if it would have been empowered to take jurisdiction in the first instance, and all the states must accord full faith and credit to the first State's ensuing custody decree."[3] This case arises out of a jurisdictional stalemate that came to pass notwithstanding the strictures of the Act.

The Maine Probate Court judge gave no deference to what this Court has said in *Thompson v. Thompson* or its federal duty under the federal PKPA law. Instead the judge's intentions are shown clearly when he said "A recent New Hampshire Supreme Court decision pertaining to the children indicates that, on remand to the New Hampshire trial court, the trial judge will lack authority to consider the petitioner as a custodial option for the children. In contrast this Court is less impeded regarding the selection of a guardian. See 18-A M.R.S.A. § 5-206,"[4]..."[h]as most recently been reviewed by the New Hampshire Supreme Court and pursuant to what's referred to as a slip opinion"... "This tape is being made on the 7th of February 2006"... "concerning guardianship

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2 *Id.*, 484 U.S. 174, 177 (1988).

3 *Id.*, 484 U.S. 174, 178 (1988).

4 *See* App. B, Page 38a.

petitions of Jonathon Gray and Leeanna [sic] Gray"... "I'm going to issue an ex-parte order of temporary guardianship".."[u]pon petition of Lisa Sorenson"..."The court further possess jurisdiction... [n]otwithstanding the assertion of concurrent jurisdiction over the affairs of the minors in the New Hampshire court system"... "Maine qualifies as the home state for purposes of further proceedings"... "[t]he court hereby appoints Lisa Sorenson as temporary guardian of the minor children, Jonathon Gray and Leeanna Gray"..."[t]o the exclusion of the minors' parents, the exclusive at-all decision making authority of every nature concerning the minor children."[5]

Maine's federal duty under 1738A(g) of the Act was mandatory, it "shall not" exercise jurisdiction in any proceeding and "shall" enforce according to its terms and shall not modify any custody determination made consistently with the Act. The New Hampshire custody decree(s) were consistent with the Act and were entitled to recognition and enforcement under the Act and the Full Faith and Credit Clause of the United States Constitution and it was Maine's federal duty was to recognize and enforce the custody decrees of New Hampshire. Under Maine law as an alternative remedy it was required to use any other law such as the PKPA that was available in Maine to enforce a foreign custody decree.[6]

New Hampshire's custody decrees were consistent with the provisions of the Act because under 1738A(c)(E) it had

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5 *See* "Official Transcripts of February 7, 2007 Expedited Hearing," App. B, Page 46a, 54a, 57a, 58a, 60a.

6 *See* M.R.S.A. §1763 Duty to Enforce. App. C, Page 115a.

continuing exclusive jurisdiction pursuant to subsection (d), New Hampshire have jurisdiction under its own state laws and New Hampshire remains Mr. Gray's residence.[7] The parents divorce decree provides that under 1738A(b)(4), the Federal Parental Kidnapping Prevention Act.[8]

In *Thompson v. Thompson* "[T]he Full Faith and Credit Clause obliges States only to accord the same force to judgments as would be accorded by the courts of the State in which the judgment was entered. Because courts entering custody orders generally retain the power to modify them, courts in other States were no less entitled to change the terms of custody according to their own views of the child's best interest. See New York ex rel. *Halvey v. Halvey*, 330 U.S. 610, 614 -615 (1947)."[9] Maine is no less entitled to change the terms the New Hampshire custody decree of its sister State of New Hampshire and even more so unauthorized to change its sister State of New Hampshire's supreme court's terms pertaining to Lisa Sorenson retaining custody of Mr. Gray and Ms. Gray's children. The review of any final judgment or decree of any State supreme court rests exclusively within the jurisdiction of this Court under 28 U.S.C. §1257(a), not within Maine state court's jurisdiction. Lisa Sorenson's proper recourse to the final judgment of the Supreme Court of New Hampshire was to either file a motion for rehearing with that court or petition this Court under 28 U.S.C. § 1257(a), not in forum shopping the courts of Maine..

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7 *See* App. C, Page 123a, 124a, 128a; 132a.

8 *See* App. D, Page 167a and Page 178a.

9 484 U.S. 174, 176 (1988).

The context of the PKPA is the principal problem Congress was seeking to remedy, a parent who lost a custody battle in one State had an incentive to engage in 'forum shopping in another State to relitigate the custody issue in a new forum. As the legislative scheme suggests, and as Congress explicitly specified, one of the chief purposes of the PKPA is to "avoid jurisdictional competition and conflict between State courts." Pub. L. 96-611, 94 Stat. 3569, 7(c)(5), note following 28 U.S.C. 1738A.[10] It is this circumstance that has resulted in the jurisdictional deadlock in this case.[11] Congress also intended to that parents avoid excessive litigation. Mr. Gray and Ms. Gray have spent three and half years of excessive litigation over their children with respect Lisa Sorenson retaining custody of their children and the children have been without their mother and father, their natural family. The petition should be granted for ultimate review of Maine's duty to comply with the federal law PKPA.

II. INTERSTATE EMERGENCY JURISDICTION INVOKED TO ESTABLISH PERMANENT CUSTODY DECREES VIOLATES THE PKPA

The Maine probate court never specified it was invoking "temporary emergency jurisdiction," it justified its ex parte action on the probability of harm in the absence of its taking action and bootstrapped emergency jurisdiction onto their assumption of jurisdiction under the venue portions of its guardianship state statute and a "home state" analysis when there was already a New Hampshire home state to justify the

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10 *Id.* 484 U.S. 174, 182 (1988)

11 *Id.* 484 U.S. 174, 182 (1988)

permanency of its orders, its intention was to appoint a permanent guardian. The ex parte order did not comply with Maine's UCCJEA emergency jurisdiction statute requiring "a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under section M.S.R.A. §1745 to 1747. The Maine UCCJEA emergency jurisdiction statute requires that "the order issued in this State remains in effect until an order is obtained from another state within the period specified or the period expires." If there was an "emergency" requiring intervention by a Maine court, without the Maine UCCJEA statutorily required language specifying when the temporary guardianship order expired, by operation of Maine law, the ex parte order expired when the New Hampshire supreme court issued its Mandate and Remand Order back to the Salem District Court on February 13, 2006.

Maine adopted under its state laws the Uniform Child Custody Jurisdiction Act (UCCJA) and replaced it with the revised Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). One of the reasons the UCCJA was revised was to clarify when a court could take emergency jurisdiction. The Maine UCCJEA makes clear that emergency jurisdiction shall be exercised to protect a child on a temporary basis only until the court with the appropriate jurisdiction issued a permanent order.[12] Neither the UCCJEA nor its predesor UCCJA "contemplated to be a vehicle for a state to attain modification jurisdiction on an ongoing basis or for an indefinite period of time."[13]

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12 9 West's U. Laws Ann., *supra*, U. Child Custody Jur. & Enf. Act, Prefatory Note, p. 651

13 *In re Joseph D., supra*, 19 Cal.App.4th at p. 691.

Assumption of emergency jurisdiction does not confer upon the state exercising emergency jurisdiction the authority to make a permanent custody disposition.[14] This comports with this Court holdings in *Thompson v. Thompson* "Once a State exercises jurisdiction consistently with the provisions of the Act, no other State may exercise concurrent jurisdiction over the custody dispute even if it would have been empowered to take jurisdiction in the first instance"[15] The Maine Supreme Judicial Court's judgment that the guardianship custody decree complied with the PKPA is wrong and it does not comport with this Court opinions.

Mr. Gray respectfully asserts that if the Maine Supreme Court decision, if allowed to stand, it destroys and ignores the Congressional intent to create order and sanity in an area where the parents have no other means to enforce their out-of-state custody decrees with a state court that is unwilling to comply with its federal mandate to comply the PKPA and instead chooses to optionally comply. Review of this petition by this Court is critically important to parents and children alike where a state asserts concurrent jurisdiction as temporary emergency jurisdiction with the intentions of issuing permanent custody decrees in conflict with the childrens' home state jurisdiction in violation of the PKPA.

III. PROCEDURAL DUE PROCESS WAS DENIED

The Due Process Clause of the Fourteenth Amendment to the Constitution of the United States of America provides no States shall deprive any person of life, liberty or property

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14 *Id.* at pp. 689-690.

15 484 U.S. 174, 178 (1988).

"without due process of law." In *Hager v. Reclamation Dist* this Court held due process must be pursued in the ordinary mode of prescribed law.[16] The core of these requirements is notice and a hearing for an opportunity to be heard before an impartial tribunal. In *Mullane v. Central Hanover Trust Co.,* notice is an elementary and fundamental requirement in any proceeding reasonable calculated, under all circumstances to apprise all interested parties of the pendency of an action and afford them an opportunity to present their objections.[17] In *Goldberg v. Kelly* the notice must be sufficient to enable the receipt to determine what is being proposed and what he must do to prevent the deprivation of his interest.[18] In *Baldwin v. Hale* "Parties whose rights are to be affected are entitled to be heard."[19] In *Stanley v. Illinois* this Court held that "we have concluded that all Illinois parents are constitutionally entitled to a hearing on their fitness before their children are removed from their custody."[20]

The Maine Court Rules of Probate Procedure (M.R.Prob.P.) Rule 12(2) states in part "In formal probate proceeding for.. [g]uardianship.., the notice of hearing shall set a date for a hearing which shall be... [a]t least 14 days after the completion of service upon all persons to be served. Under Maine state law M.R.S.A. §5-207 "a notice must be given at least 5 days before a hearing and due diligence of

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16 111 U.S. 701, 708 (1884).

17 339 U.S. 306, 314 (1950).

18 397 U.S. 254, 267-68 (1970).

19 68 U.S. (1. Wall.) 223, 233 (1863).

20 405 U.S. 645, 658, 92 S.Ct. 1208 (1972).

giving that notice is required."[21] The Probate Court waived its notice to the parents and entered an ex parte temporary guardianship. Mr. Gray and Ms. Gray never received one word that Lisa Sorenson filed guardianship petitions over their children in a Maine court or received notice of before a hearing took place, when the hearing did take place without the parents an order was entered that deprived the parents custody of their children. In *D.B. and T.B. v. M.A.* the Alabama Appeals Court held that when another state enters a custody order without providing proper notice to a relevant party, or without giving that party reasonable opportunity to be heard, such order was not made in accordance with the PKPA and its is "not entitled to full faith and credit and the Supreme Court of Alabama has observed that "neither the Full Faith and Credit Clause of the United States Constitution, nor any legislation under its authority, entitles a child custody [judgment] entered by a court lacking in peronam jurisdiction over affected parties to extraterritorial effect."[22] In *In Re The Adoption of a Child, K.L.L,* the Colorado Court of Appeals held "[t]hat notice of the guardianship proceeding must be given to the parents. Failure to notify the parties constitutes a violation of due process sufficient to deprive the court of jurisdiction, rendering any orders void. Although the court entered an

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21 *See* M.R.S.A. §5-207, App. C, Page 107a.

22 2006 Ala. Civ. App. 2006 LEXIS 602; *Ex Parte Raywood*, 549 So. 2d 103, 104 (Ala. Civ. App. 1989), *Ex Parte Dean*, 447 So. 2d 733, 737 (Ala. 1984), *Mav v. Anderson*, 345 U.S. 528, 543, 73 S. Ct. 840, 97 L. Ed. 1221, 67 Ohio Law Abs. 468 (1953); *Kulka v. Superior Court of California*, 436 U.S. 84, 91, 98, S. Ct. 1690, 56 L. Ed. 2d. 132 (1978).

order extending the temporary guardianship, that order was void for lack of notice to mother and father."[23]

IV. MAINE GUARDIANSHIP STATUTE IS UNCONSTITUTIONAL

This Court has said in *Troxel v. Granville* "The Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law." We have long recognized that the Amendment's Due Process Clause, like its Fifth Amendment counterpart, "guarantees more than fair process." *Washington* v. *Glucksberg,* 521 U. S. 702, 719 (1997). The Clause also includes a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests." *Id.*, at 720; see also *Reno* v. *Flores,* 507 U. S. 292, 301-302 (1993). The liberty interest at issue in this case--the interest of parents in the care, custody, and control of their children--is perhaps the oldest of the fundamental liberty interests recognized by this Court. More than 75 years ago, in *Meyer* v. *Nebraska,* 262 U. S. 390, 399, 401 (1923), we held that the "liberty" protected by the Due Process Clause includes the right of parents to "establish a home and bring up children" and "to control the education of their own." Two years later, in *Pierce* v. *Society of Sisters,* 268 U. S. 510, 534-535 (1925), we again held that the "liberty of parents and guardians" includes the right "to direct the upbringing and education of children under their control." We explained in *Pierce* that "[t] he child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." *Id.*, at 535. We returned to the

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23 No. 06CA1884. *In re the Adoption of a Child, K.L.L*

subject in *Prince* v. *Massachusetts,* 321 U. S. 158 (1944), and again confirmed that there is a constitutional dimension to the right of parents to direct the upbringing of their children. "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." *Id.*, at 166. In subsequent cases also, we have recognized the fundamental right of parents to make decisions concerning the care, custody, and control of their children. See, *e.g.*, *Stanley* v. *Illinois,* 405 U. S. 645, 651 (1972) ("It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children `come[s] to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements' " (citation omitted)); *Wisconsin* v. *Yoder,* 406 U. S. 205, 232 (1972) ("The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition"); *Quilloin* v. *Walcott,* 434 U. S. 246, 255 (1978) ("We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected"); *Parham* v. *J. R.*, 442 U. S. 584, 602 (1979) ("Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course"); *Santosky* v. *Kramer,* 455 U. S. 745, 753 (1982) (discussing "[t] he fundamental liberty interest of natural parents in the care, custody, and management of their child"); *Glucksberg*, *supra*, at 720 ("In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the `liberty' specially protected by the Due Process Clause includes the

righ[t] ... to direct the education and upbringing of one's children" (citing *Meyer* and *Pierce*)). In light of this extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children."[24]

Maine's Section 18-A M.R.S.A. §5-206 and 18-A M.R.S.A § 5-204(c) allows "any person" and more than any one person be appointed a guardian over children and authorizes state courts to make these appointment(s) without the consent of their natural parents based soley on a judge's determination that an undefined and unconstitutionally vague "intolerable living situation" exists regardless of a level of jeopardy to the child which would rise to the level of parental unfitness and it is in the best interest of a child. The statutes are breathtakingly broad which effectively permits a court to disregard and overturn any decision by a fit parent concerning because the parents consent is not required nor their estimation of the child's best interest is given deference or special weight since the appointment can be made over their objections. As applied to Jeffrey and Janette Gray who are non-residents of Maine, who have not been found to be judicially unfit in the states in which they are citizens of, and their family in this case, the statutes unconstitutionally infringes upon and violates the fundamental "liberty interests" of the natural parents right to make decisions for, care, custody and control over their children protected by the substantive component of the Due Process Clause of the Fourteenth Amendment of the United State Constitution and under as in the case of *In the Matter of Jeffrey Gray and Janette Gray* and as in this Courts case of *Troxel v. Granville* and is therefore unconstitutional.

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24 530 U.S. 57 (2000)

CONCLUSION

The judgments of both state supreme courts are final and do not agree with one another with respect to Lisa Sorenson retaining custody of the natural parents' Jeffrey and Janette Gray's children. The parents have no other available relief other than in this Court, they have no private cause of action in federal court as this Court as said in *Thompson v. Thompson* and that "ultimate review remains available in this Court for truly intractable deadlocks." Consideration of this petition has now become ripe for this Court's exercise of its jurisdiction to determine whether the federal constitutional rights have been violated and which of two conflicting state supreme court custody decisions is valid.

For all of the various reasons presented above, Petition for Writ of Certiorari should be granted.

DATED: April 27, 2007

Respectfully submitted

JEFFREY M. GRAY
Petitioner

Appendix A

MEMORANDUM DECISION
MAINE SUPREME JUDICIAL COURT
DATED JANUARY 9, 2007
IN DOCKET NO. YOR-06-320
IN RE: JONATHON GRAY AND
LEEANNA GRAY

MAINE SUPREME JUDICIAL COURT
Reporter of Decisions

Decision No. Mem 07-13 Docket No. Yor-06-320

IN RE JONATHON G. et al.

Submitted on Briefs December 20, 2006
Decided January 9, 2007

Panel: SAUFLEY, C.J., and CLIFFORD, DANA, ALEXANDER, CALKINS, and LEVY, JJ.

MEMORANDUM OF DECISION

The father of Jonathon and Leeanna G. appeals from a judgment entered in York County Probate Court (*Nadeau, J.*) awarding permanent guardianship of the two children to their paternal aunt. The father argues that the Probate Court erred by failing to comply with the requirements of the Uniform Child Custody Jurisdiction and Enforcement Act, 19-A M.R.S. §§ 1731-1783 (2005) and the Parental Kidnapping Prevention Act, 28 U.S.C.S. § 1738A (LexisNexis 2003), by entering an order for custody when jurisdiction was in New Hampshire. In accordance with those laws, the Probate Court properly communicated with the New Hampshire Family Division Court and determined that jurisdiction was in

Appendix A

Maine. In addition, the father has failed to demonstrate that the Probate Court committed any error of law in awarding guardianship of the children to the aunt. The entry is: Judgment affirmed.

Attorney for appellant:
Thomas J. Greco, Esq. Williams & Greco, P.A.
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Attorney for appellee:
Virginia Lee Holt, Esq.
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Scarborough, ME 04070-0806

Appendix A

**NOTICE OF APPEAL TO
MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
YORK COUNTY PROBATE COURT
DATED MAY 18, 2006
IN DOCKET NO. 2006-0087
IN RE JONATHON GRAY
IN DOCKET NO. 2006 – 0088
*IN RE LEEANNA GRAY***

APP-1
Issued 9/26/02

STATE OF MAINE

YORK PROBATE COURT

In Re: Jonathon Gray — Docket No. 2006-0087
Leeanna Gray — 2006-0088

NOTICE OF APPEAL
TO THE LAW COURT

I appeal to the Law Court from the judgment, order or ruling entered in this proceeding on May 2, 2006.

Pursuant to M.R. App. P. 5(b)(2)(A), the Statement of the Issues (reasons for appeal) are attached or are as follows;

1. Lack of Subject Matter Jurisdiction due to UCCJEA and the PKPA.

2. Lack of Personal Jurisdiction over the natural Father, Jeffrey Gray.

Appendix A

3. Insufficient Notice of the Petition for **Guardianship and for Temporary Guardianship** on the natural Father, Jeffrey Gray.

☒ The Transcript Order form is attached.

☐ No Transcript will be ordered

☐ No electronic or other recording of the proceeding can be prepared for this case. Therefore, a statement in lieu of the transcript will be prepared pursuant to M.R. App. 5(d)

Date: 5- 18- 06 /s/ Thomas J. Greco
Appellant/Appellant's Attorney

/s/Thomas J. Greco 7927
Appellant's Attorney & Maine Bar Registration Number
50 Monument Square #303
Appellant's Attorney Address
Portland, Maine 04101

Notice: This notice must be filed within 21 days of the entry of the judgment in the docket.

Appeals from the Probate Court to the Law Court are governed by the Maine Rules of Appellate Procedure.

Appendix B

APPOINTMENT OF GUARDIAN OF MINOR
STATE OF MAINE
YORK COUNTY PROBATE COURT
DATED MAY 2, 2006
IN DOCKET NO. 2006-0087
IN RE JONATHON GRAY
IN DOCKET NO. 2006–0088
IN RE LEEANNA GRAY

STATE OF MAINE PP-104
1-1-81

PROBATE COURT Alfred
Location of Court

YORK, ss DOCKET 2006-0087
DOCKET 2006-0088

In Re: Jonathon Gray
MINOR
In Re: Leeanna Gray
MINOR

APPOINTMENT OF GUARDIAN OF MINOR

Upon hearing or after legal opportunity for hearing the court finds that a qualified person has been presented to this court to be appointed guardian of the above named minor, that venue is proper, that the required notices have been given or waived, that the requirements of 18-A MRSA §5-204 have been met, and that the welfare and best interest of the minor will be served by the requested appointment.

The court hereby appoints Lisa Sorenson whose address is 22 Paquin Avenue, Biddefored, Maine 04005

FULL / ~~LIMITED (strike one)~~ guardian of this minor and directs issuance of Letters of Guardianship to said guardian.

Appendix B

~~If this is a LIMITED GUARDIANSHIP, the following apply~~[1]

The guardian shall be entitled to claim the minor as an exemption for federal and state tax purposes on her tax returns, in lieu of the minor's parents, for each tax year that this guardianship order has not been terminated by this Court.

The guardian may request by letter to the Court the issuance of a child support order or a contempt show cause subpoena requiring a parent obligor to appear in court to answer to any claim of non-compliance with any applicable order from this Court.

The guardian must report the progress of the ward and the condition of the ward's estate within the guardian's possession or control, to the Court, annually.

Guardians and conservators shall not relocated themselves or their ward to a state orther than Maine for a period greater than 30 dys without giving the Court and all interested persons at least 30 days written notice prior to such relocation and without the Court's approval if the Court requires a hearing following its receipt of such notice. They must also keep the Court regularly informed regarding their current mailing and physical addresses and telephone number.

Since Jeffrey Gray submitted through Counsel to this Court's personal jurisdiction, the guardian may request a hearing establishing child support payable by him.

Appendix B

Dated this second day of May, A.D. 2006.

/s/ Robert M.A. Nadeau
Judge of Probate

[1] See 18-A MRSA §5-105

Acceptance dated January 31, 2006 filed on January 31, 2006

/s/ Carol J. Lovejoy
Register of Probate

Appendix B

ORDER ON
PETITION FOR APPOINTMENT OF
GUARDIANSHIP OF MINOR ALLEGING
INTOLERABLE LIVING SITUATION
STATE OF MAINE
YORK COUNTY PROBATE COURT
DATED MAY 2, 2006
IN DOCKET NO. 2006-0087
IN RE JONATHON GRAY
IN DOCKET NO. 2006–0088
IN RE LEEANNA GRAY

STATE OF MAINE PP-108
6-15-98

YORK PROBATE COURT Alfred
Location of Court

In Re: Jonathon Gray DOCKET 2006-0087
MINOR
In Re: Leeanna Gray DOCKET 2006-0088
MINOR

ORDER ON PETITON FOR APPOINTMENT
GUARDIAN OF MINOR ALLEGING
INTOLERABLE LIVING SITUATION

On the within Petition of Lisa Sorenson for guardianship of the above-named minor, the Court finds by clear and convincing evidence the following

1. Janette Silva Gray Piela of Dighton, Massachusetts is the mother of the minor.

2. Jeffrey Gray of Salem, New Hampshire is the father of the minor.

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3. The father of the minor received proper notice of the within proceedings and has appeared with counsel, but failed to appear for final hearing.

4. ~~(If applicable)~~ The parents (mother) ~~(father)~~ of the minor ~~have~~ (has) not responded to proper notice of the within proceedings, and failed to appear for trial.

5. A living situation has been created that is at least temporarily intolerable for the minor as follows:

   The minor's parents have an established history of neglect, if not outright abuse concerning the minor and have failed to demonstrate that their conduct will not continue.

6. The proposed living situation will provide a living situation that is in the best interest of the minor.

7. The within appointment is in the best interest of the minor.

~~8. If this is a limited guardianship~~

   ~~a. The powers and duties of the guardian are as follows:~~

   _____

   ~~b. The parental rights and responsibilities retained by the parents (mother) (father) of the minor are as follows:~~

   _____

   _____

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The Register shall enter the following in the docket.

The Order dated May 2, 2006, is incorporated in the docket by reference. This entry is made in accordance with M.R.P.P. 79(a) at the specific direction of the Court.

Date: May 2, 2006

/s/ Robert M.A. Nadeau
Judge of Probate

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ORDER ON MOTION FOR RECONSIDERATION STATE OF MAINE BIDDEFORD DISTRICT COURT DATED APRIL 27, 2006 IN DOCKET NO. BID-FM-05-89

JEFFREY M. GRAY V. JANETTE L. GRAY

STATE OF MAINE
YORK, ss.

DISTRICT COURT
BIDDEFORD
DOCKET NO. BID-FM-05-89

JEFFREY GRAY,
Plaintiff

v.

ORDER ON MOTION

JANETTE GRAY,
Defendant

This matter came before this Court most recently on a Motion for Reconsideration and Request for Expedited Hearing filed by Lisa Sorenson, paternal aunt of the parties' minor children, Leeanna and Jonathon, now eight and one-half and ten years old of age, respectively. Present at court and participating were the following: Ms. Sorenson and Virginia Holt, Esq., her attorney; Paula J. Werme, Esq., counsel for Jeffrey Gray.[1] The Court entertained the argument of counsel and reserved decision on the Motion. The Court also reviewed the Report of UCCJA Conference

[1] Attorney Werme had been granted permission by this Court to appear before this Court in this action pursuant to M.R.Civ.P. 89(b).

issued by the York County Probate Court in Docket 06-87 and 06-88, dated April 25, 2006.

On April 7, 2006, acting upon a Motion for Ex Parte Enforcement of Custody Decree, this Court issued an Ex Parte Order on Enforcement. At that time, the Court had been provided with, and reviewed a substantial number of documents outlining the convoluted procedural posture in which this extended family has been embroiled.[2] Although the Court expressed its reluctance to add yet another court into the mix, it was and remains concern about the lack of actual notice provided to Mr. Gray in regard to the guardianship hearing conducted in the York County Probate Court. At the hearing on the Motion for Reconsideration, the Court indicated that it was also concerned about the conflicting directives from the Courts in Maine and New Hampshire and the untenable position in which it placed these family members.

Therefore, the Court Grants the Motion for Reconsideration and Vacates its Ex Parte Order of April 7, 2006. At the present time, the New Hampshire orders which Mr. Gray sought to have registered in Maine have not been registered. If he wishes to pursue that effort, he must ask the Court for a hearing date for that matter. If he fails to do so within thirty days, the Court will deny the pending request for registration.

The Clerk is directed to make the following entry in the civil docket pursuant to M.R.Civ.P. 79(a): "This Order on

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[2] Those documents included the February 27, 2006 order issued by Bruce DalPra, Martial Master of the Family Division of the Salem, New Hampshire District Court.

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Motion is incorporated into the docket by reference at the specific direction of the Court."

Date: 4 / 27 / 06 /s/ Christine Foster, Judge
Maine District Court

SERVICE OF ORDER

The parties have been provided with a copy of this Order by sending a copy by ordinary mail as follows:

Attorney for Plaintiff / Paula Werme, Esq.
Defendant, pro se
Attorney for Movant / Virginia Holt, Esq.

Date: 4/ 27 / 06 /s/ Kathryn L. Jones
Clerk, Maine District Court

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REPORT OF UCCJA CONFERENCE
STATE OF MAINE YORK COUNTY
PROBATE COURT
DATED APRIL 25, 2006
IN DOCKET NO. 2006-0087
IN RE JONATHON GRAY
IN DOCKET NO. 2006 – 0088
IN RE LEEANNA GRAY

STATE OF MAINE

YORK, ss. PROBATE COURT

In Re: Jonathon Gray Docket No. 2006-0087
Leeanna Gray 2006-0088

Lisa Sorenson)
Petitioner)
)
v.) REPORT OF UCCJA
) CONFERENCE
Jeffrey Gray and)
Janette Silva Piela,)
Respondents)

As represented at the review hearing in this matter on April 19, 2006, the Court scheduled and on April 24, 2006 had a 30 minute telephonic conference with Bruce F. DalPra, Martial Master of the Family Division of the Salem, New Hampshire District Court. Master DalPra's Court has had jurisdiction and issued orders relating to the custody and best interests of the minor children, and the rights of the minors' parents and of the Petitioner in this Court, Lisa Sorenson.

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By his recommendation dated February 27, 2006, approved by a judge of his Court, "home state" jurisdiction was ceded by that Court to this Court for the purpose of the pending guardianship proceedings, the counterpart to which to be available to the parties in the New Hampshire Probate Court due to the fact that the minor children have resided and been in Maine since October, 2004.

In speaking with Master DalPra, it was mutually determined that Maine, not New Hampshire, is the "home state" of the children. He indicated that he will attempt to discuss this issue, as well, with Judge Christine Foster of the Maine District Court in Biddeford, Maine relating to a collateral proceeding initiated by the minors' father, Jeffrey Gray (Respondent in this Court), against the minor's mother, Janette (Gray) Piela (also a Respondent in this Court). It is at best extremely unclear whether Jeffrey Gray, through his reported New Hampshire counsel, Paula Werme, Esq.[3], informed Judge Foster about the existence of Master DalPra's February 27, 2006 Order.

It is this Court's understanding that the minor children have been released to the Respondent, Jeffrey Gray's custody by Judge Foster on an ex-parte basis despite the prior, extensive findings from Master DalPra's court strongly indicating that such a course is likely to be very detrimental to the safety and best interests of the children. This was

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[3] This Court issued a letter April 11, 2006 to Judge Foster questioning her Court's authority to enter her "Ex Parte Order on Enforcement of Custody Decree" dated April 7, 2006. A copy of that letter was provided to Master DalPra's Court and to all counsel. This Court has received no reply from Judge Foster.

done without consultation with this Court or with Master DalPra and his Court, and without notice to the Temporary Guardian, Lisa Sorenson, and her counsel, Virginia Holt, Esq. It is the Court's understanding that Attorney Holt has filed a Motion for Reconsideration and Request for Expedited Hearing that recently was heard by Judge Foster in a contested hearing, accordingly.[4] This Court is unaware

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[4] Paula Werme, Esq., a New Hampshire attorney not licensed in Maine, was present at the April 19, 2006 hearing in this Court but declined to seek by motion her appointment to act as a visiting attorney pursuant to Me.R.P. 79(a). It was noted by the Court, also, that her client, Jeffrey Gray, does have counsel of record in this proceeding, namely Tom Greco, Esq., who was notified of the hearing but did not attend. It was further noted that Ms. Werme was not sponsored by any licensed Maine attorney, such that she would be authorized to practice in this Court pursuant to Rule 89(b). It is unclear whether she had secured such sponsorship as required under Me.R.Civ.P. 89(a), when she appeared before Judge Foster of the Maine District Court and, if she was not so sponsored, it is unclear why the Maine District Court recognized and heard her at all. It must be said, however, that this Court has found Attorney Werme's conduct, both prior to her physical presence in the Court on April 19, 2006 and o that date, to have been most unprofessional, disrespectful and offensive.

First, on a completely unsolicited basis, Ms. Werme forwarded to this Court a thick copy of documents associated with a "Motion to Show Cause Immediate Consideration Requested" dated March 31, 2006 she apparently filed with the Supreme Court of New Hampshire under Docket No. 2004-0738 concerning a matter involving the parents of the minors in this proceeding. In that pleading, she purports to name a number of parties and even Master DalPra and Judge Korbey of the Salem, New Hampshire District Court, as well as the undersigned, as Defendants in some capacity wit respect to the New Hampshire proceeding, even

of any results pertaining to that motion to date, but it shares Master DalPra's grave concerns regarding Judge Foster's decision.

At the hearing in this Court last week, counsel represented to the Court that the children remain in the custody of their father, Jeffrey Gray, wherever he may be. As I explained to counsel, until and unless this Court's Orders, the issuance of any further or attempted, clarifying order from this Court would do nothing more than confuse law enforcement officials and, therefore, not serve any useful purpose.

---

though New Hampshire's jurisdiction over this Court is at best, highly questionable. Her unsolicited filing and subsequent actions in this Court can only fairly be described as an effort to harass and intimidate, and will not be tolerated. Then, when she was present in this Court on April 19, 2006, without filing any appearance authorizing her to practice in this Court, she stood up without invitation and most disrespectfully asserted that this Court lacked any authority concerning matters involving the minor children and that its temporary guardianship Order Dated February 10, 2006 was being appealed. Clearly, without her authorized appearance in these proceedings, she has no authority to appeal anything, and the Court is unaware of the filing of any Notice of Appeal, whether timely or otherwise, pertinent to that temporary guardianship Order by anyone else, including Attorney Greco.

In summary, Ms. Werme's conduct was impertinent and harassing, and was quite clearly, intentionally so. She was eventually instructed to remain seated and not interrupt the Court proceedings any further, as the Court did not wish to hear from her and would instruct a security officer to remove her from the Court if she violated that requirement. She did comply with that instruction.

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At the conclusion of the Court's telephone conference with Master DalPra, it was suggested and agreed that he will contact Judge Foster to discuss with her (if necessary in consultation with me), the jurisdictional issue further.

Accordingly, it is ordered that counsel are encouraged to coordinate and to check closely with the clerks of all three Courts involved in matters concerning the children subject to this proceeding, to determine status, and that they shall report to this Court the status of any resolution of the jurisdictional issue in the pertinent Maine and New Hampshire District Courts that may result, whereupon further proceedings will be scheduled in this Court, if and as may be appropriate.

The Register shall enter the following on the docket: In accordance with M.R.P.P. 79(a) and at the specific direction of the Court, this Order shall be incorporated onto the docket by reference.

Dated: April 25, 2006

/s/ Robert M.A. Nadeau
Judge of Probate

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LETTER FROM JUDGE NADEAU
STATE OF MAINE YORK COUNTY
PROBATE COURT
IN DOCKET NO. 2006-0087
IN RE JONATHON GRAY
IN DOCKET NO. 2006 – 0088
IN RE LEEANNA GRAY
TO
HONORABLE CHRISTINE FORSTER
STATE OF MAINE
BIDDEFORD DISTRICT COURT
IN DOCKET NO. BID-FM-05-89
JEFFREY M. GRAY V. JANETTE L. GRAY
DATED APRIL 11, 2006

STATE OF MAINE
PROBATE COURT OF YORK COUNTY

ROBERT M. A. NADEAU
JUDGE

CAROL J. LOVEJOY
REGISTER OF PROBATE

ALFRED, MAINE 04002
(207) 324-1577
Fax (207) 324-0163
E-Mail: probate@co.york.me.us

April 11, 2006
BY FAX AND MAIL

Honorable Christine Foster
Maine District Court
25 Adams Street
Biddeford, Maine 04005

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RE: Jonathon Gray and Leeanna Gray,
Docket Nos. 2006-0087 and 2006-0088
Jeffrey M. Gray v. Janette L. Gray
Docket No. BID-FM-05-89

Dear Judge Foster:

This Court is in receipt of a faxed copy of an Ex Parte Order on Enforcement of Custody Decree dated April 7, 2006, authored by you concerning the minors, Jonathon Gray and Leeanna Gray, over whom this Court exercised jurisdiction in a guardianship proceeding. We not that you have apparently conducted an ex parte hearing and issued a declaration, without consultation with this Court, that the temporary guardianship order dated February 10, 2006 issued by this Court in favor of Petitioner, Lisa Sorenson (paternal aunt of the minors), is invalid due to lack of home state jurisdiction under the Uniform Child Custody Jurisdiction Act (UCCJA). We are troubled by your actions for several reasons, including the following:

1. Nothwithstanding your Order, the Family Division of the Salem District Court in Salem, New Hampshire, by Master Order dated February 27, 2006 approved and ordered by a judge of that Court on March 1, 2006, specifically deferred jurisdiction over the minors to the State of Maine (Exhibit A).

2. Your Plaintiff, Jeffrey Gray, through counsel, appeared in this Court, submitted to its jurisdiction, and entered his opposition to the pending guardianship petitions which have been consolidated.

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3. This Court did indeed enter into a home state analysis under the UCCJEA prior to its exercise of jurisdiction. It has exclusive subject matter jurisdiction concerning proceedings involving guardianships of minors. See 18-A M.R.S.A. §§ 1-302, 1-303, and 5-205. Parties are entitled to request relief from orders of this Court pursuant to Me.R.P.P. 7 and 60. Reviews of orders of the Maine probate courts are appealed to the Maine Law Court, Me.R.App.P. 1, not to a Maine district court.

It is unclear whether your Court, on an ex-parte basis, was informed regarding the foregoing matters, and it is unclear whether any consultation between your Court and the Salem District Court occurred prior to the issuance of your Ex Parte Order. It is clear, however, that you did not consult with this Court. My concern, therefore, is that now the parties are involved in three different forums, whereas there was just one forum, namely, this Court, prior to the issuance of your Order. I am very concerned about the waste of judicial resources and the difficulty these circumstances will create for the parties, and I am very concerned that your Court would purport to have jurisdiction superior to that of this Court regarding jurisdictional determinations when your Court lacks any authority to grant guardianship powers over minors in the absence of a child protective proceeding.

As a result of the foregoing, we must continue to process and consider requests for relief which may be tendered by any of the parties involved in the still pending guardianship proceedings, as it is very unclear whether your Order had any legal effect on the Order of this Court. Perhaps it did, but this is at best extremely unclear.

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Sincerely,
/s/ Robert M.A. Nadeau
Judge of Probate

RMAN/cj1
Enclosure
Cf: Virginia Lee Holt, Esq, Thomas Greco, Esq.
Janette Silva Gray Piela, Salem District Court

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EX PARTE ORDER ON ENFORCEMENT OF CUSTODY DECREE STATE OF MAINE BIDDEFORD DISTRICT COURT DATED APRIL 7, 2006 IN DOCKET NO. BID-FM-05-89 *JEFFREY M. GRAY V. JANETTE L. GRAY*

STATE OF MAINE

BIDDEFORD DISTRICT COURT

DOCKET# BID-FM-05-89

JEFFREY M. GRAY v. JANETTE L. GRAY

EX PARTE ORDER ON
ENFORCEMENT OF CUSTODY DECREE

Having read the pleadings in this matter dated April 7, 2006, this Court makes the following ORDER:

1. Jeffrey Gray is authorized to take immediate physical custody of Jonathon Gray and Leeanna Gray from Lisa Sorenson pursuant to the ORDER of the Salem Family Division dated August 26, 2004, as reinstated by ORDER of the NH Supreme Court on February 13, 2006. He is further authorized to remove them from the State of Maine to their home State of New Hampshire.

2. Jeffrey Gray is authorized to seek the immediate assistance of any law enforcement agency in the State of Maine to assist him in safely removing the children from the custody of Lisa Sorenson.

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3. In making this ORDER, this Court has read the ORDER of the York County Probate Court, but has issued it nonetheless.

4. This Court also believes that the ORDER of the York County Probate Court is invalid under the provisions of the Maine UCCJEA, and therefore unenforceable with respect to Jeffrey Gray. 19-A M.R.S.A. § 1736.

5. The Court believes that further proceedings in this matter should be concluded in the State of New Hampshire.

So ORDERED.

Date: 4/ 7 / 06

/s/ Christine Foster, Judge
Maine District Court

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MOTION TO TERMINATE ORDER OF TEMPORARY GUARDIANSHIP STATE OF MAINE YORK COUNTY PROBATE COURT DATED FEBRUARY 10, 2006 IN DOCKET NO. 2006-0087 *IN RE JONATHON GRAY* IN DOCKET NO. 2006–0088 *IN RE LEEANNA GRAY*

STATE OF MAINE

YORK, ss. PROBATE COURT

In Re:Jonathon Gray	)	Docket No. 2006-0087
Leeanna Gray	)	AND 2006-0088
	)	
	)	MOTION TO RECONSIDER
	)	AND TERMINATE ORDER
	)	OF TEMPORARY
	)	GUARDIANSHIP

NOW COMES Jeffrey M. Gray, the father, of the above minor children, by and through counsel, and moves that this Honorable Court Reconsider Its Order of Guardianship dated February 10, 2006 and as ordered 18-A M.R.S.A. §5-204. As grounds for this Motion, the father states the following;

1. The respondent father (hereinafter "father") is the Plaintiff in a divorce proceeding commenced in September, 1998 in the State of New Hampshire.

2. The New Hampshire Court Ordered the father as the sole physical custodian of his children. The children

remained in the father's custody until the divorce was final on August 7, 2002. Thereafter, and for a period of time, the children resided with the mother in Massachusetts. Subsequently, father petitioned the Court to modify the custody order and in August, 2004 the Court Ordered custody to the father and the children returned to New Hampshire.

3. On October 15, 2004 the New Hampshire District Court Ordered custody of the minor children to the petitioner, Lisa Sorenson. The parents objected at the time of the Order, however, the children were in fact placed with the petitioner. The father's argument to the Supreme Court on Appeal focused on the fact that there has never been a finding that he abused or neglected his children. Contrary, the District Court made a specific finding the he did not abused or neglected his children. Furthermore, there has never been a finding of parental unfitness by any state child agency or Court.

4. Father's appeal went to oral argument before the New Hampshire Supreme Court and it found that the placement of the children with the Petitioner, Lisa Sorenson was outside the Courts Judicial Authority. The Supreme Court, retaining personnel as well as subject matter jurisdiction and remanded the October 15, 2004 Custody Order to the District Court demanding further proceedings consistent with the Court's judicial authority. To this date, the New Hampshire District Court retains jurisdiction and is entertaining Motions filed by the father's counsel in the State of New Hampshire.

5. The Petitioner, Lisa Sorenson had acknowledge that the Appeal in the New Hampshire Supreme Court was

pending. Notably, on September 29, 2005 the Appeal was heard at oral argument and on January 27, 2007 the Supreme Court Ordered that the father prevailed. Lisa Sorenson attended the September 29, 2005 proceeding and she did attempt to participate. Moreover, the petitioner had actual knowledge that on January 27, 2006 the father prevailed which demonstrates rationale for shopping for a court in this state. Remarkably, on January 31, 2006 the Petitioner filed her Petition for Temporary Guardianship. At the time of the hearing on the Petition, father did not have actual notice of the pending matter. As remarkable, Petitioner has maintained father's physical address and telephone number and has occasion, telephoned the father. However, and to this date, Petitioner has not contact father.

6. Father argues that had he been notified of the pending action in the state of Maine, he would attended. His position is supported by the attendance at all prior hearings. Furthermore, and as critical to this motion is the issue of home stat and the petitioner forum shopping. As noted in this Court's decision, the Petitioner had acknowledge of the New Hampshire case and its pending litigation (in fact, New Hampshire case and its pending litigation (in fact, New Hampshire Courts placed the children with the petitioner). Lisa Sorenson filed a brief on her behalf in the father's appeal. Her argument was considered and rejected by the Supreme Court, however, she did attend the oral argument proceeding on September 29, 2005. Her actions demonstrate that she had actual knowledge of the Remand Order of October 2004 pursuant to the Remand. Clearly the Petitioner was shopping for fresh forum in support of her cause rather than the forum that maintained original subject matter jurisdiction and had recently remanded its case to the District Court.

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7. The father respectfully refers this Court to Brown v. Brown, 1999 Me Super 215, wherein it is noted that child custody determinations implicate the jurisdiction requirements of the UCCJA, Me. Rev. Stat. Ann. Title 19-A § 1745 and the PKPA 28 U.S.C. § 1738A. Specifically, Brown dealt with competing jurisdictions in which Maine and Mississippi was at odds over the proper forum for subject matter jurisdiction. The court in Brown noted that UCCJA and the PKPA place limitations on the Court's power to exercise jurisdiction in child custody matters (*see* Peterson v. Peterson, 464 A.2d 202 (1983). Moreover, Brown notes that when a court has notice of a pending court proceeding in another state, then "[a] court of this state shall not exercise its jurisdiction *substantially* in conformity with this chapter, unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or other reasons."

8. Maine's version of the Uniform Custody Child Jurisdiction and Enforcement Act (UCCJEA), 19-A, §§1731-1783, is designated to promote recognition of foreign custody decrees and to discourage child-snatching in an attempt to gain a favorable forum prior to seeking custody awards. As long as one party remains in the state of the initial decree and the court record and additional relevant evidence is available there, that state has significant connection jurisdiction, as defined in Me. Rev. Stat. tit. 19-A § 1745, and no other state should modify the decree unless the state of original decree declines to exercise its continuing jurisdiction, because, otherwise, the purpose of the UCCJEA could be easily defeated. *See* Kendall v. Whalen, 526 A.2d 588, 1987.

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9. 19-A § 1745 noting initial child custody jurisdiction states that jurisdiction over initial determinations, except as otherwise provided in section 1748, that a court of this State has jurisdiction to make an initial child custody determination ***only if***:

A. This State is the home state of the child on the date of the commencement of the proceeding or was the home state of the child within 6 months before the commencement of the proceeding and the child is absent from this State but a parent or person acting as a parent continues to live in this State.

B. A court of another state does not have jurisdiction under paragraph A or a court of the home state of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum under section 1751 or 1752 and:

1) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this State other than merely physical presence; and

2) Substantial evidence is available in this State concerning the child's care, protection, training and personal relationships;

C. All courts having jurisdiction under paragraph A or B have declined to exercise jurisdiction on the ground that a court of this State is the more appropriate forum to determine the custody of the child under section 1751 or 1752; or

D. No court of any other state would have jurisdiction under the criteria in paragraph A, B, or C.

10. Lastly, father states that the Guardianship should be terminated and any matter considering custody of the children filed in New Hampshire. The Petitioner has an open door to the New Hampshire Courthouse as noting by she gaining custody; furthermore, the New Hampshire Court is relatively close in proximity to the York Probate Court and surely, not too far for the Petitioner to travel The case is ripe for a determination in the New Hampshire Court and throughout this action, New Hampshire has not relinquished its home state status.

WHEREFORE, Pursuant to the above, the father respectfully requests that the Order of the Guardianship be reconsidered and terminated thereby allowing the New Hampshire Courts to exercise jurisdiction and hear this action on the merits.

DATED: 02-28-06 /s/ Thomas J. Greco
Thomas J. Greco, Bar Number 7927
Attorney for Father

-3-

Pursuant to M.R.Civ.P 7(b), this Motion must be filed in writing with the York County Probate Court, 45 Kennebunk Road, PO Box 399, Alfred, Maine 04002-0399 and a copy of same sent to fathers Attorney at 50 Monument Square, Suite 303, Portland, ME 04101 no later than 21 days after filing of this Motion. Failure to do so shall be deemed a waiver of all filing objections to the Motion which may be granted without further notice or hearing. If after filing your

objections to the Motion you fail to appear at any time the Court notifies you to do so, a Judgment may be entered against you in your absence regarding the Motion.

ORDER

Motion ~~granted~~ / denied /s/Robert M.A. Nadeau 3-22-06
Judge, Maine Probate Court

SERVICE OF ORDER

I, Thomas J. Greco, Attorney for the Father, hereby certify that on this date, I have sent by first class mail a copy to the following:

Virginia Lee Holt,Esq.,POBox 806,Scarborough, ME04070
Mary Ann Callanan,Esq.,650Elm St,Manchester, NH03101
Paula Werme, Esq.,83 North Main St,Boscawen, NH 03303

DATED: 02-28-06 /s/ Thomas J. Greco
Thomas J. Greco, Bar Number 7927
Attorney for Father

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AFFIDAVIT OF JEFFREY M. GRAY MOTION TO TERMINATE ORDER OF TEMPORARY GUARDIANSHIP STATE OF MAINE YORK COUNTY PROBATE COURT DATED FEBRUARY 10, 2006 IN DOCKET NO. 2006-0087 *IN RE JONATHON GRAY* IN DOCKET NO. 2006–0088 *IN RE LEEANNA GRAY*

STATE OF MAINE

YORK, ss. PROBATE COURT

In Re:	Jonathon Gray Leeanna Gray	Docket No. 2006-0087 AND 2006-0088
		AFFIDAVIT IN SUPPORT MOTION TO TERMINATE TEMPORARY GUARDIANSHIP

NOW COMES Jeffrey M. Gray, the father, of the above named and states under oath as follows;

1. I am the natural father of the above children, Jonathon Gray, 4/22/96 and Leeanna Gray, 7/18/97. I am divorced from the childrens' biological mother and the matter was decided on August 7, 2002.

2. The jurisdiction on this case has historically remained n the State of New Hampshire. I have resided in New Hampshire since 1991.

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3. Prior to and during the pendency of the divorce, I was sole physical custodian of my children. Post divorce, and after hearing, custody was assigned to the mother for approximately two years, I was again awarded custody after hearing. Thereafter, the Court placed the children in Maine.

4. On October 15, 2004, post hearing, the New Hampshire District Court Ordered custody of the children to the petitioner, Lisa Sorenson. The mother and I objected, however, the Court mistakenly placed the children with the petitioner. I duly appealed the New Hampshire District Court's decision and I eventually argued the case before the Supreme Court of New Hampshire.

5. I prevailed before the Supreme Court of New Hampshire partially because, there was not any evidence or findings from any agency that I ever abused or neglected my children. The appeal was heard on September 29, 2005. On January 27, 2006 the Supreme Court Ordered that I prevailed. Lisa Sorenson attended the September 29, 2005 proceeding and she did attempt to participate. Moreover, the petitioner had actual knowledge that on January 27, 2006, I prevailed on appeal. On January 31, 2006 and with the knowledge of the pending New Hampshire litigation concerning the children, the Petitioner filed her Petition for Temporary Guardianship in Maine. At the time of the hearing on the Petition, I had no idea of the Petition pending in Maine and had no notice whatsoever. Petitioner maintained my physical address and telephone number and on occasion telephoned.

6. I have never missed a hearing in any jurisdiction concerning my children and if I had notice of the matter pending in Maine, I would have attended. Because New

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Hampshire has maintained its home state jurisdiction and because the case was actually pending, I was completely surprised at the Petitioner's action in Maine. Notably, the Petitioner prevailed in New Hampshire on the issue of placement; which was appealed and pending. Also pending was Child Placement Motion. Therefore, the idea that the Petitioner would forum shop and seek a new Court should demonstrate that she had knowledge of the remand order on appeal.

7. I respectfully suggest that the Guardianship should be terminated and any matter considering the custody of the children is filed in New Hampshire. New Hampshire has retained home state jurisdiction and I have had a matter pending in New Hampshire Court since the October 15, 2004 placement with the Petitioner (the appeal). The Petitioner has an open door to the New Hampshire Courthouse as noted by gaining custody. The New Hampshire Court is close proximity to the York County Probate Court as well as the residence of the Petitioner. Balancing the concept of a new jurisdiction when the original and retained jurisdiction is an hour's drive is unfair to me and my children. With the appeal decided and the remand to the District Court, this case is ripe for a final resolution in the court of original jurisdiction.

8. Lastly, I respectfully request the Maine Court to allow the case to be heard in the Court of original jurisdiction on the merits and further note that the Petitioner can participate to the fullest extent in the Courts of New Hampshire.

9. Thank you for your kind consideration.

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/s/ Jeffrey M. Gray
Jeffrey Gray

STATE OF MAINE
CUMBERLAND, ss. February 28, 2006

Personally appeared before me, Jeffrey Gray, who made oath that the foregoing statements by him are true and based upon his own personal knowledge and belief, and to the extent based upon belief, he believes the same to be true.

Before me,

/s/ Thomas J. Greco
Thomas J. Greco, Esq.
Attorney for Jeffrey Gray

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EX PARTE ORDER OF TEMPORARY GUARDIANSHIP STATE OF MAINE YORK COUNTY PROBATE COURT DATED FEBRUARY 10, 2006 IN DOCKET NO. 2006-0087 *IN RE JONATHON GRAY* IN DOCKET NO. 2006-0088 *IN RE LEEANNA GRAY*

STATE OF MAINE

YORK, ss. PROBATE COURT

In Re:	Jonathon Gray	Docket No. 2006-0087
	Leeanna Gray	Docket No. 2006-0088

EX PARTE ORDER OF TEMPORARY GUARDIANSHIP

Pursuant to the provisions of 18-A M.R.S.A. § 5-204(c) and upon Petition of Lisa Sorenson, paternal aunt of the minors, Jonathon Gray (DOB 4/22/96) and Leeanna Gray (DOB 7/18/97), to be appointed as guardian of both minors, and pursuant to Ms. Sorenson's request for an expedited hearing for the purposes of being awarded authority to serve as a temporary guardian for the minors, the Court's Register issued notices by certified mail to the minors' parents, Janette Silva Gray Piela and Jeffrey Gray, as well as to the minors' Guardian ad Litem, Mary Ann Callanan, at their last known addresses, setting a hearing for February 7, 2006 at 3:15 P.M.

On the day and time of the hearing, the Petitioner appeared, together with her counsel, Virginia Lee Holt, Esq.

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Neither parent nor Ms. Callanan appeared. However, the Register has confirmed by tracking confirmation through the United States Postal Service web site that the Court's certified mailing as to Janette Silva Gray Piela at her last known address, has an uncertain delivery status apparently due to an inability to be tracked, whereas service on Jeffrey Gray has awaited his pickup since February 3, 2006 at his last known address[5]. Attorney Holt also informed the Court that Ms. Callanan elected not to attend this Court's hearing due to another commitment.

Notwithstanding the fact that the parents of the minors have not been afforded five days notices as contemplated under the requirements of the above statute, but upon review of the submissions of the Petitioner including a variety of documentation from the New Hampshire court system pertinent to findings resulting in an award of primary residence of the children to the Petitioner since late 2004, and given some of the egregious findings contained in those pleadings, the Court finds that sufficient good cause exists to waive the five day notice requirement for purposes of granting ex parte relief in this proceeding. The Court further notes that it possess jurisdiction and venue over this proceeding pursuant to the provisions of 18-A M.R.S.A. § 5-205, inasmuch as the minors have resided and been present in the State of Maine for almost 1 ½ years, notwithstanding the assertion of concurrent jurisdiction over the affairs and

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[5] The parents very recently appeared before the New Hampshire Supreme Court in connection with a related divorce proceeding involving custody of these children. The address provided by the Petitioner in her petitions is reported to be the same addresses used by those parents on record with the New Hampshire court system.

interests of the minors in the New Hampshire court system. The Court finds, therefore, that under the circumstances[6] and in light of the provisions of the Uniform Child Custody Jurisdiction and Enforcement Act, 19-A M.R.S.A. §§ 1731 *et seq.*, Maine qualifies as the "home state" for the purposes of further proceedings concerning the children, whereas the circumstances persuade the Court that its immediate intervention is required.

The Court further finds by clear and convincing evidence, based upon the representations of the Petitioner and the pleadings, including copies of New Hampshire court findings submitted by her, that in the absence of this Court's immediate intervention, the children will be in danger of being subjected to renewed, and possibly violent, as well as certainly, at least temporarily intolerable circumstances, regardless of whether they may rise to the level of jeopardy. The Court further finds that the children's status quo continuation of residence in the care of the Petitioner and the need for her to have exclusive decision making authority pending further order of this Court, are consistent with their best interests.

Accordingly, the Court hereby appoints Lisa A. Sorenson, of 22 Paquin Avenue, Biddeford, Maine, 04005, to serve in such capacity for a period of not more than 6 months from the date of this Order. The temporary guardian's

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[6] A recent New Hampshire Supreme Court decision pertaining to the children indicates that, on remand to the New Hampshire trial court, the trial judge will lack the authority to consider the petitioner as a custodial option for the children. In contrast, this Court is less impeded regarding the selection of a guardian. See 18-A M.R.S.A. § 5-206.

authority shall be unlimited. Specifically, she shall have, to the exclusion of the minors' parents, all decision making authority of every nature concerning the minor children. Pending further order of the Court, the minors' parents shall retain only the right to due process, namely, the right to notice and an opportunity to be heard regarding ongoing proceedings in this matter including, upon the receipt by this Court of a proper motion or petition and/or any requests for an expedited hearing or other relief.

The Register shall enter the following on the docket: In accordance with M.R.P.P. 79(a) and at the specific direction of the Court, this Order shall be incorporated onto the docket by reference.

Dated: February 10, 2006 /s/ Robert M.A. Nadeau
Judge of Probate

Appendix B

OFFICAL TRANSCRIPT OF FEBRUARY 7, 2006 EXPEDITED HEARING AND EX PARTE ORDER OF TEMPORARY GUARDIANSHIP OF THE STATE OF MAINE YORK COUNTY PROBATE COURT IN DOCKET NO. 2006-0087 *IN RE JONATHON GRAY* IN DOCKET NO. 2006–0088 *IN RE LEEANNA GRAY*

STATE OF MAINE PROBATE COURT
YORK, SS.
DOCKET NO. 2006-0087 / 0088

In Re:
Jonathon Gray and Leeanna Gray

BEFORE;

The Honorable Robert M.A. Nadeau, Judge of the York County Probate Court, in Alfred, Maine, on February 7, 2006.

APPEAREARANCES:

Virginia Lee Holt, Esq.
For the Petitioner, Lisa Sorenson

OFFICIAL TRANSCRIPT
Prepared by the Electronic Recording Division

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(This matter came for hearing before the Honorable Robert M.A. Nadeau, Judge of the York County Probate Court, in Alfred, Maine, on Tuesday, February 7, 2006.)

COURT: Good afternoon.

REGISTER OF PROBATE, CAROL LOVEJOY: You may be seated.

COURT:We're taking up requests for expedited hearings in connection with two matters designated as Docket Numbers 2006-0087 and 2006-0088, respectively relating to petitions for appointment of a guardian for Jonathon Gray and Leeanna Gray. The Petitioner in both proceedings is a paternal aunt, Lisa Sorenson of Biddeford - - and that would that be you, ma'am?

LISA SORENSON: Yes.

COURT: And you are represented by Attorney Virginia Lee Holt who's here. Nice to see you again. It's been a while.

VIRGINA LEE HOLT, ESQ.: Thank you. Nice to see you.

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16 COURT: Virginia has filed a motion - - or actually what - - a
17 pleading that she styles Joinder of Petitions which, Virginia,
18 I'm assuming is essentially a motion to consolidate these
19 two --

20 MS. HOLT: Yes.

21 COURT: -- two petitions, is that right?

22 MS. HOLT: Yes.

23 COURT: Let me see who else is here first. The petition
24 indicates that the father of – the petitions indicate that the
25 father of the children is Jeffrey Gray of Salem, New

2

1 Hampshire. Would that be you, sir?

2 SCOTT SORENSON: Husband of Lisa.

3 COURT: Oh, you are. Okay. Your name?

4 SCOTT SORENSON: Scott Sorenson.

5 COURT: Scott Sorenson. And the mother is named Janette 6 Silva Gray - - is it Piela?

7 LISA SORENSON: Piela

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8 COURT: Piela of Dighton, --

9 LISA SORENSON: Mm-hmm

10 COURT: -- Massachusetts? And is she here?

11 MS. HOLT: No.

12 LISA SORENSON: Yes.

13 COURT: Okay. And your name?

14 JOAN GRAY: My name is Joan Gray, and I'm the grandmother.

15 COURT: Okay. So you--

16 JOAN GRAY: And mother of Lisa.

17 COURT: Yeah. I was just gonna say that. Has
18 today's hearing been provided to the mother and father of the
19 children?

20 REGISTER LOVEJOY: Yes. We – we mailed notice to them.

21 COURT: Okay. We do have in the file an affidavit from
22 Register Lovejoy indicating certified mail, return receipt indicating certified mail, return receipt

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23 requested, notice to both parents as well as to someone named
24 Mary Ann Callanan, a guardian ad litem of Manchester, New
25 Hampshire. The file does not indicate whether any of those

3

1 folks received the certified mailings
2 information on that?

3 REGISTER LOVEJOY: (Indiscernible) but if you want to
4 just give me the – (Indiscernible) receipt (Indiscernible).

5 COURT: Okay.

6 (PAUSE)

7 REGISTER LOVEJOY: --The one to Mary Ann--

8 LISA SORENSON: Callahan

9 REGISTER LOVEJOY:--Callahan [sic], the guardian ad
10 litem, was forwarded to a new address on February 3rd. and
11 that's all it says on that one.

12 (PAUSE)

13 REGISTER LOVEJOY: The one to – 'double check the number --
14 the one to Janette says there's no record even of that

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found.

(PAUSE)

REGISTER LOVEJOY: And the one to Jeffrey was attempted to be delivered on February (Indiscernible), and no other information is available.

COURT: Virginia, do you have any information as to whether any of these folks received notice of today's proceedings?

MS. HOLT: I talked to the guardian ad litem, Mary Ann Callanhan [sic], today and she said she hadn't received it as yet. We weren't aware she had a new address. But she had a hearing in the Concord court in New Hampshire today. So, she

4

wasn't able to come this afternoon.

COURT: And insofar as the parents are concerned, I- I'm aware that there has been substantial activity in the New Hampshire Court System regarding these children.

MS. HOLT: Mm-hmm.

COURT: It appeared to me that the father of the child had counsel – or was he pro se?

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MS. HOLT: In the divorce matter?

COURT: It appears that this – that the activities all relate to a divorce matter and and ongoing hearings that ultimately resulted in this petitioner being given residence with these children that has most recently been reviewed by the New Hampshire Supreme Court and pursuant to what's referred to as a slip opinion --

MS. HOLT: Mm - hmm

COURT: -- has been reversed –

MS. HOLT: Yes, but –

COURT: -- with a finding that, in effect, this petitioner is not someone who may be designated as such a custodian under New Hampshire statutes –

MS. HOLT: Mm-hmm

COURT: --as they've described 'em.

MS. HOLT: I think my client said that she provided a copy of that slip opinion. It was after the children were- after the judge fou-(Demo)[phonetic]found that the ch- the

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parents were unfit and placed the—the children with my client in October of 2004. There was an appeal to the Supreme Court, and the decision that came down said that the Superior Court judge in the divorce matter didn't have jurisdiction to find the parents unfit, that that basically was through another statute which the jurisdiction is their District Court not. their Superior Court. So, they reversed the decision and sent it back for further action. The –and at this point, my understanding from the guardian today is that it hasn't been -- the decision has not yet been certified by the Supreme Court and sent back to the District Court, and they can't hold any hearings or address any motions until that actually gets back to them

COURT: Where are the children right now?

MS. HOLT: With my client still. They are not aware of what has happened at this point. The father has made some claims – I believe he's already filed a motion with the - New Hampshire court asking the children to be returned to him based on the slip opinion. Whether he will – he feels that the

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decision was enough for him to come and claim the children.
We're not sure. In the past he has filed the -- previous divorce decision in the Biddeford District Court as a foreign order.
So, the –the divorce decis—the divorce court's decision to
place them with my client has been filed as a foreign order in
the Biddeford District Court, but nothing else has happended

6

regarding that. At this point, my client's concern is that if
the New Hampshire court can—has to act on the slip opinion
and return the child to the father that this will put the
child-the ch-both children in great immediate risk of not
only emotional harm but possible physical harm because of the
history they've learned from the children since they have
stayed with them. And I believe some of it was written in the
guardian's report my client submitted along with the-with
the-her petition. The biggest concern is that in November
the guardian wrote a report to the court and asked the New
Hampshire court not to share it with the father because she

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was afraid of repercussions if the father knew what the son had revealed. The court overruled her and said that he had a right to the guardian's report, and it was provided to the father. So, the father knows that the son has told about his past abuse and—and physical abuse and what not, and if the child knew there was a possibility he could go back with his father, he would be very upset and emotionally damaged at this point, we're afraid. The mother has-has claimed that she's become disabled and isn't able to make any hearings or-or work, et cetera. So, we're—and she has had no contact with the children since April of this year—

LISA SORENSON: No. Since September.

MS. HOLT: Since September.

LISA SORENSON: Contact but not visit—April, 2005 is

7

when they saw her last.

MS. HOLT: Okay. She's—her last contact was in September through a--

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LISA SORENSON: Letter.

MS. HOLT: --a letter in which she put a poem which was shown to the guardian because of concerns, and the mother seems to have some psychological problems in—in how she should be interacting with her children at this point, to the point it may be abusive for them to go back with her, as well.

COURT: I certainly see from the submissions that there's—there are factual findings of abuse and danger to the children, all of that. My concern really relates more to procedural and jurisdictional matters. It appears that there is a New Hampshire court that has asserted jurisdiction and, I'm sure, continues to feel it has jurisdiction over the matters affecting the children. From what I see in the petition, the children have not been in Maine— how long have they been in Maine?

LISA SORENSON: A year and a half.

COURT: Okay. They've been here for a year and a half.

LISA SORENSON: Since October, 2004

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22 MS. HOLT: And that's why we filed it here in Maine
23 rather than New Hampshire, 'cause the jurisdiction was the
24 county where the children have been living, and that
25 would be York County.

8

1 COURT: Right. Right. Okay

2 MS. HOLT: And we're certainly asking for a temporary
3 order that could be prefaced to expect cooperation with the
4 New Hampshire court in a further action.

5 COURT: Given the fact that the father in this case has
6 participated in ongoing court proceedings in New Hampshire
7 and, apparently, is going to be participating in some remanded
8 proceeding in New Hampshire and pursued an appeal to the
9 New Hampshire Supreme recently ruled on—that does not
10 indicate whether he was pro se or represented by counsel, --

11 MS. HOLT: Actually, I think it was the mother that
12 actually put the appeal in and the father did a brief pro se,
13 and did—did he do an oral argument,--

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LISA SORENSON: Yeah, pro se—

MS. HOLT: --as well?

LISA SORENSON: --himself.

MS. HOLT: He—pro—he wasn't represented at that time.

COURT: He was not. He—he had an address of record, thought, with the court. Is it the same address that he's indicated in the petition that we've used to get notice to him?

LISA SORENSON: A P.O. box. That's what I've been told.

COURT: A P.O. box.

LISA SORENSON: Mm-hmm.

COURT: And was that the same address he used in

9

connection with his appeal to the New Hampshire Supreme Court?

LISA SORENSON: Yes.

COURT: Yes. Okay. And according to the register's

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record here, the notice went out on February 1, Carol-

REGISTER LOVEJOY: Yes.

COURT: --setting today's date for hearing?

REGISTER LOVEJOY: Yes.

COURT: And, again, the post office said with respect to him—

REGISTER LOVEJOY: That it was attempted to be delivered at 10:55 a.m. on February 3rd and that notice was left letting him know he had a certified mail notice.

COURT: Carol, can I have my Dictaphone, please, and a tape?

(PAUSE)

MS. HOLT: If it pleases your Honor—

COURT: I'm sorry?

MS. HOLT: If it pleases—there's one other point to be made that's not so much to the immediate danger but to the— the situation that without—with the current placement order in question from New Hampshire, without another order giving

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my client some sort of legal guardianship, the children will not be able to—she won't be able to take the children to doctors or—I believe they had counseling set up, and that would be—that would be stopped, as well. So, that—that's

10

another—

LISA SORENSON: (Indiscernible)

MS. HOLT: --concern that brought us to bring this petition.

COURT: (Dictating) This tape is being made on the 7th of February, 2006. We're referring to Docket Numbers 2006-0087 and 2006-0088 concerning guardianship petitions of Jonathon Gray and Leeanna [sic] Gray. I'm going to issue an ex-parte order of temporary guardianship, and it will read as follows: Pursuant to 18-A M.R.S.A. Section 5-208 (c) and upon petition of Lisa Sorenson, paternal on the paternal side, right?

LISA SORENSON: Paternal aunt.

COURT: Aunt. Paternal aunt of the minors, Jonathon Gray

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(D.O.B. 7-18-97) and—I'm sorry—that was a—that was Leeanne's [sic] date of birth. Jonathon Gray (DOB:4-22-96) and Leeanne [sic] Gray DOB as I stated earlier, was scheduled for hearing by notice

(The judge rewinds the tape and plays back portions of the dictation.)

COURT: (Continues dictating) To be appointed as guardian of both minors, and pursuant to her—Ms. Sorenson's requests for an expedited hearing for the purposes of being awarded authority to serve as temporary—as a temporary guardian for the minors, the Court's register issued notices

11

by certified mail to the minors' parents, Janette Silva Gray Piela and Jeffrey Gray, as well as to the minors' New Hampshire guardian ad litem, Mary Ann Callanan, setting a hearing for February 7, 2006, at 3:15 p.m. On the day of the hearing—on the day and time of the hearing, the petitioner appeared, together with her counsel, Virginia Lee Holt, Esquire. Neither parent nor the New Hampshire guardian ad litem appeared. However, the register has confirmed by

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tracking confirmation through the United States Postal Service
web site that certified mailing as to Janette Silva Gray Piela
at her last known address appears to be—now was it—did they say undelivered or—
say undelivered or--

REGISTER LOVEJOY: That one said, no record found. So,
that means the post office may not have scanning-capability
to scan it in.

COURT: Okay.

(Judge rewinds the tape and plays back portions of the dictation.)

COURT: (Continues dictating) Has an uncertain delivery
status due to—apparently due to an inability to be tracked,
whereas service on Jeffrey Gray has awaited his pickup since
February 3, 2006, at his last known address. I have a
footnote here, an the footnote would read, The parents very
recently appeared before the New Hampshire Supreme Court in
connection with a related divorce proceeding involving custody

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of these same children. The addr-the addresses provided by the petitioner in her petitions are the same addresses-are reported to be the same addresses used by those parents on record with the New Hampshire Court System. End of footnote, back to the text. Notwithstanding the fact that the parents of the minors have not been afforded the five days' notice as contemplated under the requirements of the above statute, but upon review of the submissions of the petitioner including a variety of court documentation from the New Hampshire Court System pertinent to findings resulting in an award of primary residences of the children to the petitioner since late 2004, and given some of the egregious allegations and—and findings contained in those pleadings, the Court finds that suffiecient good cause exists to waive the five-day notice requirement for purposes of granting ex parte relief in this—in these matters. The Court further notes that it possesses jurisdiction under provisions of 18-A M.R.S.A. Section...

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18 (PAUSE)

19 COURT: ...jurisdiction and venue over these-these
20 proceedings pursuant to the provisions of 18-A M.R.S.A.
21 Section 5-205, inasmuch as the minors have resided and been
22 present in the State of Maine for almist one and one half
23 years, notwithstanding the assertion of concurrent
24 jurisdiction over the affairs and interests of the minors
25 b—in the New Hampshire Court System. The Court finds,

13

1 therefore, that under the circumstances and in light of the
2 provisions of the Uniform Child Custody Jurisdiction Act

3 (PAUSE)

4 COURT: ...make that Uniform Child Custody Jurisdiction
5 and Enforcement Act, 19-A M.R.S.A. Section 1731 et seq.,
6 Maine qualifies as the "home state"
7 (PAUSE)

8 COURT: ...for purposes of further proceedings concerning
9 whereas the circumstances persuade the Court that its immediate intervention is required. The Court
10 that its immediate intervention is required. The Court
11 further finds based upon the representations of the petitioner

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and the pleadings, including copies of New Hampshire court findings submitted by her, that in the absence of this Court's immediate intervention, the children would be in danger of being subjected to renewed, and possibly violent, as well as certainly, at least temporarily intolerable circumstances., regardless of whether they my rise to the level of jeopardy. The Court further finds that the children's status quo continuation of residence in the care of the petitioner and the need for her to have exclusive decision-making authority pending further order of this Court, are consistent with their best interests. Accordingly, the Court hereby appoints Lisa A. Sorenson as temporary guardian of the minor children, Jonathon Gray and Leeanna Gray-where we've said Lisa A. Sorenson, put, of 22 Paquin Avenue, Biddeford, Maine, 04005

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14

to serve as temporary guardian of Jonathon Gray and Leeanna Gray, both of 22 Paquin Avenue, Biddeford, Maine, 04005, to serve in such capacity for a period of not more than six months from the date of this order. The temporary guardian's authority shall be unlimited. Specifically, she shall have, to the exclusion of the above minors' parents, the exclusive-- at—all decision-making authority of every nature concerning the minor children. Pending further order of the Court, the minors' parents shall retain only the rights to due process, namely, the right to notice and an opportunity to be heard regarding ongoing proceedings in this matter including, upon the receipt by this Court of a proper motion or petition, any request for expedited hearing and/or other relief. The register shall enter the following on the docket: In accordance with M.R.P.P. 79(a) and at the specific direction of the Court, this order shall be incorporated onto the docket by reference. And a date line and a signature line. That's it for that matter and for this tape. Attorney Holt is there

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anything else that you think I should include in the order?

MS. HOLT: No, your Honor. You were quite thorough. Thank you.

COURT: Okay. All right. It'll be a little while Is there anything else?

MS. HOLT: My client just said that there was also a request for child support, but I believe there already is an

order for child support.

COURT: We won't order child support until we have a final hearing. When and if child support is ordered because a full permanent guardianship is granted, child support will be made retroactive to the date of the docketing of your underlying petitions

LISA SORENSON: Thank you, your Honor.

COURT: You're welcome. I'm assuming that these folks may request some kind of expedited relief, and if that's so then notice will be given.

MS. HOLT: Mm-hmm.

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12 COURT: No rug will be pulled out from under you. If
13 there is any notice that's been—if there's anything filed in
14 this Court, I will not hear them without notice to you and
15 your counsel so that you'll have an opportunity to be heard,
16 as well. All right.

17 LISA SORENSON: Thank you.

18 COURT: So, you don't have to worry about that. And, I
19 mean, the order speaks for itself. Attorney Holt can guide
20 you, I'm sure, appropriately based on that. It will be a
21 while before it's typed up. We do have another hearing.
22 Ordinarily, Register Lovejoy would take these kinds of
23 priority matters herself and—and get them typed; but because
24 we have another hearing coming up, we won't be able to
25 accommodate that. So you may be waiting till tomorrow before

16

1 you get the order.

2 MS. HOLT: Okay.

3 COURT: Okay?

4 MS. HOLT: Thank you.

5 COURT: All right. You're welcome.

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LISA SORENSON: Thank you (Indiscernible)

MS. HOLT: Thank you.

COURT: You're welcome.
MACHINE OFF – END OF HEARING

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CERTIFICATION

I HEREBY CERTIFY that the foregoing, pages 2 through 17, is a true transcript of Tape Number 296, Index Numbers 1035 through 2163, recorded on February 7, 2006, by Carol Lovejoy at the York County Probate Court located in Alfred, Maine, of the case entitled In Re: Jonathon Gray and Leeanna Gray

Dated: June 21, 2006

/s/Brenda J. Cheney
Brenda J. Cheney
TRANSCRIBER

A TRUE COPY, dated at Bangor, Maine, this 21st day of June, A.D., 2006

/s/Brenda J. Cheney
Notary
Maine District Court

Appendix B

NOTICE OF REGISTRATION
OF A CHILD CUSTODY ORDER
ISSUED IN STATE OF NEW HAMPSHIRE
STATE OF MAINE
BIDDEFORD DISTRICT COURT
DATED MARCH 4, 2005
IN DOCKET NO. BID-FM-05-89
JEFFREY M. GRAY V. JANETTE L. GRAY

STATE OF MAINE
DISTRICT COURT
Location: BIDDEFORD
Docket No..BID-FM-05-89

JEFFREY GRAY
Petitioner

NOTICE OF REGISTRATION

v.

UIFSA – 19 M.R.S.A. §3201
UCCJEA – 19-A M.R.S.A. §1765

JANETTE L. (GRAY) PIELA
Defendant

Pursuant to 19-A M.R.S.A. § 1765, a Child Custody Order issued in the State of New Hampshire, was registered in the above Maine District Court on February 22, 2005.

Failure to contest the validity of the registered order will result in confirmation of the order by operation of law, and precludes further contest with respect to any matter that could be asserted.

****

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If you wish to contest the validity of the registered order, you must request a hearing within 20 days after the date of mailing or personal service of this notice.

A copy of the registered order and any other relevant documents are attached.

Date: 3 – 4 – 05 /s/ Kathryn L. Jones
Clerk

CV-110, Rev. 12/00

ATTACHED FOREIGN ORDER

SEE AFFIDAVIT AND REQUEST
FOR REGISTRATION OF FOREIGN ORDER
APPENDIX B PAGE 72a

STATE OF NEW HAMPHIRE
CHILD CUSTODY ORDER OF
SALEM DISTRICT COURT
FAMILY DIVISION AT SALEM
DATED OCTOBER 15, 2004
IN DOCKET NO. 1999–M-0183
IN THE MATTER OF
JEFFREY GRAY AND JANETTE GRAY

REVERSED
SUPREME COURT OF NEW HAMPSHIRE
JANUARY 27, 2006
IN CASE NO. 2004-0738
IN THE MATTER OF
JEFFREY M. GRAY AND JANETTE L. GRAY
APPENDIX D PAGE 147a

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NOTICE OF REGISTRATION
OF A CHILD CUSTODY ORDER
ISSUED IN STATE OF NEW HAMPSHIRE
STATE OF MAINE
BIDDEFORD DISTRICT COURT
DATED MARCH 4, 2005
IN DOCKET NO. BID-FM-05-89
JEFFREY M. GRAY V. JANETTE L. GRAY

STATE OF MAINE
DISTRICT COURT
Location: BIDDEFORD
Docket No.:BID-FM-05-89

JEFFREY GRAY
Petitioner

NOTICE OF REGISTRATION

v.

UIFSA – 19 M.R.S.A. §3201
UCCJEA – 19-A M.R.S.A. §1765

JANETTE L. (GRAY) PIELA
Defendant

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Appendix B

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A copy of the registered order and any other relevant documents are attached.

Date: 3 – 4 – 05 /s/ Kathryn L. Jones
Clerk

CV-110, Rev. 12/00

ATTACHED FOREIGN ORDER

SEE AFFIDAVIT AND REQUEST FOR REGISTRATION OF FOREIGN ORDER
SEE APPENDIX B PAGE 79a

STATE OF NEW HAMPHIRE CHILD CUSTODY ORDER OF SALEM DISTRICT COURTFAMILY DIVISION AT SALEM DATED AUGUST 26, 2004 IN DOCKET NO. 1999–M-0183
IN THE MATTER OF JEFFREY M. GRAY AND JANETTE L. GRAY

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NOTICE OF REGISTRATION OF A CHILD CUSTODY ORDER ISSUED IN STATE OF NEW HAMPSHIRE STATE OF MAINE BIDDEFORD DISTRICT COURT DATED MARCH 4, 2005 IN DOCKET NO. BID-FM-05-89

JEFFREY M. GRAY V. JANETTE L. GRAY

STATE OF MAINE
DISTRICT COURT
Location: BIDDEFORD
Docket No.:BID-FM-05-89

JEFFREY GRAY
Petitioner

NOTICE OF REGISTRATION

v.

UIFSA – 19 M.R.S.A. §3201
UCCJEA – 19-A M.R.S.A. §1765

JANETTE L. (GRAY) PIELA
Defendant

Pursuant to 19-A M.R.S.A. § 1765, a Child Custody Order issued in the State of New Hampshire, was registered in the above Maine District Court on February 22, 2005.

Failure to contest the validity of the registered order will result in confirmation of the order by operation of law, and precludes further contest with respect to any matter that could be asserted.

****

Appendix B

If you wish to contest the validity of the registered order, you must request a hearing within 20 days after the date of mailing or personal service of this notice.

A copy of the registered order and any other relevant documents are attached.

Date: 3 – 4 – 05 /s/ Kathryn L. Jones
Clerk

CV-110, Rev. 12/00

ATTACHED FOREIGN ORDER

SEE AFFIDAVIT AND REQUEST FOR REGISTRATION OF FOREIGN ORDER
SEE APPENDIX B PAGE 87a

STATE OF NEW HAMPHIRE CHILD CUSTODY ORDER OF SALEM DISTRICT COURTFAMILY DIVISION AT SALEM DATED JULY 30, 2004 IN DOCKET NO. 1999-M-0183
IN THE MATTER OF JEFFREY M. GRAY AND JANETTE L. GRAY

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LISA SORENSON'S NOTIFICATON OF REGISTRATION OF A FOREIGN ORDER STATE OF MAINE BIDDEFORD DISTRICT COURT DATED FEBRUARY 22, 2005 IN DOCKET NO. BID-FM-05-89

JEFFREY M. GRAY V. JANETTE L. GRAY

To: Biddeford District Court

From: Jeffrey M. Gray

Would you please send Notice of Registration of Foreign Judgments for the July, 30, 2004, August 26, 2004 and October 25, 2004 Court Orders from the Salem District Court, Salem, NH In the Matter of Jeffrey M. Gray and Janette L. Gray Docket No. 1999-M-0183 to:

Ms. Lisa Sorenson
22 Paquin Avenue
Biddeford, Maine 04005

Thank You.

/s/ Jeffrey M. Gray

COURT DATE STAMP
February 22, 2005

Appendix B

AFFIDAVIT AND REQUEST FOR REGISTRATION OF A FOREIGN ORDER STATE OF MAINE BIDDEFORD DISTRICT COURT DATED FEBRUARY 22, 2005 IN DOCKET NO. BID-FM-05-89

JEFFREY M. GRAY V. JANETTE L. GRAY

STATE OF MAINE

DISTRICT COURT
Location: BIDDEFORD
Docket No.:BID-FM-05-89

JEFFREY GRAY
Plaintiff

11 Stanwood Road

Salem, NH 03079
Plaintiff's Address

v.

AFFIDAVIT AND REQUEST FOR REGISTRATION OF A FOREIGN ORDER

JANETTE L. GRAY
Defendant

2330 Pleasant Street

Dighton, MA, 02715
Defendant's Address

Appendix B

I state that the attached order is in full force and effect in the State of New Hampshire and that to the best of my knowledge and belief the order has not been modified. The order includes child custody provisions and support provisions.

Check the boxes that apply:

☒ I request that the order be registered in the State of Maine pursuant to the Uniform Enforcement of Foreign Judgments Act, 14 M.R.S.A. § 8001 et seq., and that it be placed on file with this Court and with the **Biddeford / York** Police / Sheriff Department.

☒ I request that the order be registered in the State of Maine pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act, 19-A M.R.S.A. § 1731 et seq.

☒ I am filing a verified enforcement petition along with the order and request expedited enforcement pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act, 19-A M.R.S.A. § 2801 et seq.

☐ I request that the court forward a copy to the Department of Human Services, Division of Support Enforcement & Recovery, for enforcement pursuant to the Uniform Interstate Family Support Act, 19-A M.R.S.A. § 2801 et seq.

Date: February 22, 2005 /s/ Jeffrey M. Gray
Signature

Appendix B

Personally appeared the above named Jeffrey M. Gray and made oath that the foregoing statements voluntarily made and signed are true.

Date: 2 / 22 / 05 /s/ Julie M. Villemaire
~~Clerk~~ / Notary Public

Julie M. Villemarie
Notary Public, Maine
My Commission Expires December 27, 2009

CV-058, Rev. 12/00

Appendix B

ATTACHED FOREIGN ORDER

STATE OF NEW HAMPHIRE
CHILD CUSTODY ORDER OF
SALEM DISTRICT COURT
FAMILY DIVISION AT SALEM
DATED OCTOBER 15, 2004
IN DOCKET NO. 1999-M-0183
IN THE MATTER OF
JEFFREY GRAY AND JANETTE GRAY

REVERSED
SUPREME COURT OF NEW HAMPSHIRE
JANUARY 27, 2006
IN CASE NO. 2004-0738
IN THE MATTER OF
JEFFREY M. GRAY AND JANETTE L. GRAY
SEE APPENDIX D PAGE 147a

THE STATE OF NEW HAMPSHIRE
Judicial Branch-Family Division
Rockingham County, Salem New Hampshire

Dockett#1999-M-0183

IN THE MATTER OF:
Jeffrey M. Gray and Janette L. Gray
ORDER

This matter came before the court for a review hearing requested by the Court to determine the status of the children.

Appendix B

Briefly, the parties were divorced after a three day contested hearing on August 7, 2002. At the time of the divorce, Jeffrey Gray was residing in Salem, New Hampshire and Janette Gray was residing in Fairhaven, MA. There were two children born to this marriage, Leeanna, born 7/18/97 and Jonathon, born 4/22/96. Since the parties' separation, custody of the children has gone back and forth between the parents, at least three times.

In June, 2004, this court held a two day evidentiary hearing on modification of custody. Of significance at that hearing, was the testimony of the children's therapists. The therapist was focused on the children's needs and well being. Her testimony was compelling and her concern was for the trauma these children have experience as a result of their parents behavior, lack of parenting skills and acrimony. In light of such, the court requested the Guardian Ad Litem to investigate relatives of both parents for potential placement of the children. Aunt Lisa Sorenson, father's sister, was ready, willing and able to care for the children.

The hearing was scheduled for July 30, 2004. The Guardian Ad Litem recommended the children reside with Aunt Lisa. In light of the Guardian's recommendation, the parties were able to reach an agreement. The agreement laid out a plan whereby the children would reside with their father (another custodial change), attend school in Salem, be enrolled in counseling and mom would move to Salem. The parties also had an appointment wit the school after court that day to set up special education services for Jonathon which he never received. The court approved the agreement on July 30, 2004. In the meantime, the children visited with Aunt Lisa for three weeks.

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The Guardian Ad Litem notified the court and requested an emergency hearing. Apparently, the agreement between the parties and requested an emergency hearing. Apparently, the agreement the parties previously entered into was no working and Mom was not moving to Salem, NH. A hearing was held August 26, 2004, and again the parties were able to reach an agreement. The Guardian Ad Litem agreed to the stipulation. The court approved the stipulation in that it appeared workable and in the best interest of the children.

On October 8, 2004, the court held a review hearing based on the Guardian Ad Litem's request. At said hearing. The Father and the children where now living in a local hotel. The guardian testified that the Father, who was living with the children and his girlfriend, was removed from the girlfriend's home after an altercation. The children were present. Further, the Salem School District notified the Guardian Ad Litem that the school was contacted by a school in the district where the mother resides, as mother was going to take custody of the children. Her plan was to enroll the children in Assonet, Ma, where she was planning on moving soon.

Each day the emotional, physical and psychological health of these children has become more traumatized. Residing with either parent is detrimental to these children. The Guardian Ad Litem has investigated Lisa Sorenson (Aunt Lisa) and finds she would a very appropriate custodian for these children. She and the children have a close relationship. Her home easily accommodates two children. She is willing to open her home to both parents.

The children shall be placed with Lisa Sorenson. The parents shall have no unsupervised visitation. The visitation

schedule shall be set up by the Guardian Ad Litem. Both parties shall pay child support to Lisa Sorenson as per the USO attached hereto.

10 / 15 / 04
Date:

/s/ P DiMeo
Presiding Justice

Appendix B

AFFIDAVIT AND REQUEST FOR REGISTRATION OF A FOREIGN ORDER STATE OF MAINE BIDDEFORD DISTRICT COURT DATED FEBRUARY 22, 2005 IN DOCKET NO. BID-FM-05-89

JEFFREY M. GRAY V. JANETTE L. GRAY

STATE OF MAINE
DISTRICT COURT
Location: BIDDEFORD
Docket No.:BID-FM-05-89

JEFFREY GRAY
Plaintiff

11 Stanwood Road

Salem, NH 03079
Plaintiff's Address

v.

AFFIDAVIT AND REQUEST FOR REGISTRATION OF A FOREIGN ORDER

JANETTE L. GRAY
Defendant

2330 Pleasant Street

Dighton, MA, 02715
Defendant's Address

Appendix B

I state that the attached order is in full force and effect in the State of New Hampshire and that to the best of my knowledge and belief the order has not been modified. The order includes child custody provisions and support provisions.

Check the boxes that apply:

☒ I request that the order be registered in the State of Maine pursuant to the Uniform Enforcement of Foreign Judgments Act, 14 M.R.S.A. § 8001 et seq., and that it be placed on file with this Court and with the Biddeford / York Police / Sheriff Department.

☒ I request that the order be registered in the State of Maine pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act, 19-A M.R.S.A. § 1731 et seq.

☒ I am filing a verified enforcement petition along with the order and request expedited enforcement pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act, 19-A M.R.S.A. § 2801 et seq.

☐ I request that the court forward forward a copy to the Department of Human Services, Division of Support Enforcement & Recovery, for enforcement pursuant to the Uniform Interstate Family Support Act, 19-A M.R.S.A. § 2801 et seq.

Date: February 22, 2005 /s/ Jeffrey M. Gray
Signature

Appendix B

Personally appeared the above named Jeffrey M. Gray and made oath that the foregoing statements voluntarily made and signed are true.

Date: 2 / 22 / 05 /s/ Julie M. Villemaire
~~Clerk~~ / Notary Public

Julie M. Villemarie
Notary Public, Maine
My Commission Expires December 27, 2009

CV-058, Rev. 12/00

Appendix B

ATTACHED FOREIGN ORDER

STATE OF NEW HAMPHIRE
CHILD CUSTODY ORDER OF
SALEM DISTRICT COURT
FAMILY DIVISION AT SALEM
DATED AUGUST 26, 2004
IN DOCKET NO. 1999-M-0183
IN THE MATTER OF
JEFFREY M. GRAY AND JANETTE L. GRAY

THE STATE OF NEW HAMPSHIRE
Judicial Branch-Family Division
Rockingham County
Salem New Hampshire

Docket #1999-M-0183

IN THE MATTER OF:
Jeffrey M. Gray and Janette L. Gray

STIPULATION

NOW COMES the parties, Jeffrey Gray and Janette Silva (Gray), who argues and stipulates that the Court Order of July 30, 2004 be amended as follows:

1. Janette Silva shall move to Assonet, Massachusetts to pursue a job opportunity, which she believes will provide her with more marketable skills in her professional field. She will remain with the company in Assonet for at least one (1) year, but maybe as long as (2) years, to enable

her to gain her the skills the she needs in field. She will then relocate to New Hampshire;

2. Janette Silva continue to pursue employment in the New Hampshire are, which will provide her with the same or similar marketable skills in her profession. If she is able;

3. The parties shall continue to share joint physical custody;

4. The children shall reside with Jeffrey Gray during the school week and attend public school in Salem, New Hampshire for those months that school is in session;

5. Janette Silva shall have physical custody of the children as follows:

   a. Two consecutive weekends, starting on Friday at 6 pm and ending on Sunday at 6 pm. Jeffrey Gray shall then have a weekend custodial period, after which Janette Silva will have custody for two consecutive weekends from Friday at 6 pm to Sunday at 6 pm. This cycle shall repeat until such time as Janette relocates to New Hampshire. At such time as Janette relocates, the custodial schedule shall return to that outlined in the July 30, 2004 Court Order;

   1 A True Copy Attest
   /s/ Wilda R. Elliot
   Coordinator

   b. Janette shall have the children on Christmas Eve, 2004, until on Christmas Day, 2004, and then from noon on December 26, 2004, until noon on December 31, 2004;

c. Janette shall have the children for February and April School vacation weeks. It shall be her responsibility to arrange for child care should she need it during these weeks;

d. Janette shall have the children for the summers, with the exception in August during which time the children shall spend with Jeffrey. The parties shall agree on the dates of these weekends by no later than May 1;

e. Janette shall have custody on Thanksgiving;

6. Jeffrey Gray have physical custody of the children as follows:

a. Sunday at 6 pm through Friday at 6 pm.

b. Such weekends as outlined in paragraph 4a.

c. Christmas from noon on Christmas Day until noon December 26th:

d. Such time in the summer as outlined in paragraph 4d;

7. During the school year, Jeffrey shall transport the children to Janette on Friday evenings between 6 pm and 7 pm. Janette shall return the children to Jeffrey on Sunday evening between 6 pm and 7 pm. Said exchanges are to occur at the driveway of the residences of each party;

8. During the summer, Jeffrey shall pick up the children from Janette on Friday evenings between 6 pm and 7 pm. Janette shall pick up the children from Jeffrey on Sunday

evening between 6 pm and 7 pm. Said exchange are to occur in the driveway of the residence of each party;

9. The parties shall calculate the child support guidelines, assuming each party has primary physical custody of the children. Offsetting the amount Janette would pay to Jeffrey pursuant to the guidelines, Jeffrey shall pay child support pursuant to the guidelines to Janette each week throughout the year;

2

A True Copy Attest:
/s/ Wilda R. Elliott
Coordinator

Appendix B

10. All other provisions from the July 30th order which are not inconsistent with these modifications remain in full force and effect.

Date: August 26, 2004 /s/ Jeffrey M. Gray

Date: Aug. 26, 2004 /s/ James C. McCoy, III
Esq. Counsel for Jeffrey Gray

Date: Aug 26, 2004 /s/ Janette Silva

Date: Aug 26, 2004 /s/ Catherine P. McKay
Esq. Counsel for Janette Silva

Date: August 26, 2004 /s/ Mary Ann Callanan
Guardian Ad Litem

8/26/04

The Court commends the parties in their ability to put their children's interest as priority.

The Court approves and so orders this agreement.

Review hearing shall be scheduled for 3 months.

/s/ Patricia DiMeo
Presiding Justice

3

A True Copy Attest
/s/ Wilda R. Elliott
Coordinator

Appendix B

AFFIDAVIT AND REQUEST FOR REGISTRATION OF A FOREIGN ORDER STATE OF MAINE BIDDEFORD DISTRICT COURT DATED FEBRUARY 22, 2005 IN DOCKET NO. BID-FM-05-89

JEFFREY M. GRAY V. JANETTE L. GRAY

STATE OF MAINE
DISTRICT COURT
Location: BIDDEFORD
Docket No.:BID-FM-05-89

JEFFREY GRAY
Plaintiff

11 Stanwood Road

Salem, NH 03079
Plaintiff's Address

v.

AFFIDAVIT AND REQUEST FOR REGISTRATION OF A FOREIGN ORDER

JANETTE L. GRAY
Defendant

2330 Pleasant Street

Dighton, MA, 02715
Defendant's Address

Appendix B

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Check the boxes that apply:

☒ I request that the order be registered in the State of Maine pursuant to the Uniform Enforcement of Foreign Judgments Act, 14 M.R.S.A. § 8001 et seq., and that it be placed on file with this Court and with the **Biddeford / York** Police / Sheriff Department.

☒ I request that the order be registered in the State of Maine pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act, 19-A M.R.S.A. § 1731 et seq.

☒ I am filing a verified enforcement petition along with the order and request expedited enforcement pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act, 19-A M.R.S.A. § 2801 et seq.

☐ I request that the court forward a copy to the Department of Human Services, Division of Support Enforcement & Recovery, for enforcement pursuant to the Uniform Interstate Family Support Act, 19-A M.R.S.A. § 2801 et seq.

Date: February 22, 2005 /s/ Jeffrey M. Gray
Signature

Appendix B

Personally appeared the above named Jeffrey M. Gray and made oath that the foregoing statements voluntarily made and signed are true.

Date: 2 / 22 / 05 /s/ Julie M. Villemaire
~~Clerk~~ / Notary Public

Julie M. Villemarie
Notary Public, Maine
My Commission Expires December 27, 2009

CV-058, Rev. 12/00

Appendix B

ATTACHED FOREIGN ORDER

STATE OF NEW HAMPHIRE
CHILD CUSTODY ORDER OF
SALEM DISTRICT COURT
FAMILY DIVISION AT SALEM
DATED JULY 30, 2004
IN DOCKET NO. 1999-M-0183
IN THE MATTER OF
JEFFREY M. GRAY AND JANETTE L. GRAY

THE STATE OF NEW HAMPSHIRE
Judicial Branch-Family Division
Rockingham County Location
Salem

Dockett#1999-M-0183

IN THE MATTER OF:
Jeffrey M. Gray and Janette L. (Gray) Silva

AGREEMENT

The parties agree as follows:

1. The parties shall have joint legal and joint physical custody with Janette having the children 183 days per year.

2. The parties shall have the children on alternating weeks beginning each Friday at the end of the after school / daycare program. Jeffrey shall have the children beginning August 28, 2004.

Appendix B

3. Each parent shall pay the costs of daycare / after school care during his / her custodial week.

4. Each party shall enroll in individual counseling, and the parties shall enroll the children in counseling.

5. The parties shall enroll in co-parenting counseling or co-parenting mediation.

6. The holiday schedule contained in the parties divorce decree shall continue in effect; with the exception of Christmas, the holiday custodial period shall begin at 9:00 a.m. and continue through 9:00 a.m. the following day. The Christmas holiday custodial period shall begin at noon on Christmas day and continue through noon on the following day.

7 / 30 / 04
Date

/s/ Jeffrey M. Gray
Petitioner

/s/ Janette Silva

/s/ James C. McCoy III
Attorney for Petitioner

/s/ Catherine P. McKay
Attorney for Respondent

/s/ Mary Ann Callanan
Guardian Ad Litem

A True Copy Attest
/s/ Wilda R. Elliot
Coordinator

AGREEMENT P.1 of 4

Appendix B

7. Unless a parent elects to take a vacation, the parties shall follow the normal custodial schedule during all school vacation weeks. If one party takes a vacation during a school vacation week the other party shall have the children during the other school week.

8. The children will spend ~~a minimum of two weeks~~ three weeks with their Aunt Lisa Sorenson at her home in Biddeford, Maine beginning 4:00 p.m. on August 8, 2004 and continue through August 28, 2004. Janette shall meet Lisa at the Salem Police Department for the exchange on August 8th. ~~This period can be extended to 3 weeks, if Janette needs additional time to get herself moved.~~ Jeffrey shall pick up the kids from Lisa on Aug. 28th.

7 / 30 / 04
Date
/s/ Jeffrey M. Gray
Petitioner
/s/ Janette Silva
/s/ James C. McCoy III
Attorney for Petitioner
/s/ Catherine P. McKay
Attorney for Respondent
/s/ Mary Ann Callanan
Guardian Ad Litem

A True Copy Attest
/s/ Wilda R. Elliott
Coordinator

AGREEMENT P.2 of 4

Appendix B

9. The parties acknowledge that Janette will be relocating her home to the Salem, New Hampshire area, and shall complete this move before the children start school in September, 2004. The children shall attend the Salem Public Schools.

10. Jeffrey shall pay at least $5,000 of the child support arrearage to Janette on or before August 15, 2004. He shall make every effort to pay the entire arrearage off by this date. The parties estimate the arrearage owed is $6,000.00.

11. Jeffrey shall be entitled to spend a weekend with the kids, on Aug. 14 – Aug. 15, 2004. Janette shall be entitled to spend a weekend with the kids, on August 21 – Aug. 22nd, 2004.

12. If the parties cannot agree on an appropriate child support amount, the court shall review this issue on September 24, 2004. Until then or until agreed otherwise, Jeffrey shall continue to pay child support

7 / 30 / 04
Date

/s/ Jeffrey M. Gray
Petitioner

/s/ Janette Silva

/s/ James C. McCoy III
Attorney for Petitioner

/s/ Catherine P. McKay
Attorney for Respondent

/s/ Mary Ann Callanan
Guardian Ad Litem

A True Copy Attest
/s/ Wilda R. Elliott
Coordinator

AGREEMENT P.3 of 4

pursuant to the child support guidelines of $262.00 per week through the New Hampshire Division of Health and Human Services.

13. Janette shall immediately pursue all employment opportunities and shall apply for any and all assistance (including housing) to enable her to relocate to New Hampshire.

14. Both parties shall keep the other informed of his or her address, telephone number, employment address and telephone number, and cell phone number within 5 days of a change.

15. Janette shall apply for Health insurance for the kids with New Hampshire Healthy Kids.

A True Copy Attest
/s/ Wilda R. Elliott
Coordinator

7 / 30 / 04
Date
/s/ Jeffrey M. Gray
Petitioner
/s/ Janette Silva
/s/ James C. McCoy III
Attorney for Petitioner
/s/ Catherine P. McKay
Attorney for Respondent
/s/ Mary Ann Callanan
Guardian Ad Litem

Approved & So Ordered

/s/ P. DiMeo
Judge
7 / 30 / 04

AGREEMENT P.4 of 4

Appendix C

ACT OF CONGRESS
OF THE UNITED STATES OF AMERICA
FEDERAL PUBLIC LAW
UNITED STATES CODE

Title 28-Judiciary and Judicial Procedure
Part V Procedure, Chapter 115--Evidence; Documentary
§1738. State and Territorial Statues and
Judicial Proceedings
Full Faith and Credit

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken. (June 25, 1948, ch. 646, 62 Stat. 947.)

Appendix C

Title 28-Judiciary and Judicial Procedure,
Part V Procedure, Chapter 115 Evidence; Documentary,

§1738A. Parental Kidnapping Prevention Act of 1980
(PKPA) Public Law 96-611, 96th Congress
Section 6-10, 94 Stat. 3569, December 28, 1980

Full Faith and Credit Given To
Child Custody Determinations

(a) The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsections (f), (g), and (h) of this section, any custody determination or visitation determination made consistently with the provisions of this section by a court of another State.

(b) As used in this section, the term—

(1) ''child'' means a person under the age of eighteen;

(2) ''contestant'' means a person, including a parent or grandparent, who claims a right to custody or visitation of a child;

(3) ''custody determination'' means a judgment, decree, or other order of a court providing for the custody of a child, and includes permanent and temporary orders, and initial orders and modifications;

(4)''home State'' means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any of

such persons are counted as part of the six-month or other period;

(5)''modification'' and ''modify'' refer to a custody or visitation determination which modifies, replaces, supersedes, or otherwise is made subsequent to, a prior custody or visitation determination concerning the same child, whether made by the same court or not;

(6) ''person acting as a parent'' means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody;

(7) ''physical custody'' means actual possession and control of a child;

(8) ''State'' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States; and

(9) ''visitation determination'' means a judgment, decree, or other order of a court providing for the visitation of a child and includes permanent and temporary orders and initial orders and modifications.

(c) A child custody or visitation determination made by a court of a State is consistent with the provisions of this section only if—

(1) such court has jurisdiction under the law of such State; and

(2) one of the following conditions is met:

Appendix C

(A) such State

(i) is the home State of the child on the date of the commencement of the proceeding, or

(ii) had been the child's home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;

(B) (i) it appears that no other State would have jurisdiction under subparagraph (A), and

(ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(C) the child is physically present in such State and

(i) the child has been abandoned, or

(ii) it is necessary in an emergency to protect the child because the child, a sibling, or parent of the child has been subjected to or threatened with mistreatment or abuse;

(D)(i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E),

or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody or visitation of the child, and (ii) it is in the best interest of the child that such court assume jurisdiction; or

(E) the court has continuing jurisdiction pursuant to subsection (d) of this section.

(d) The jurisdiction of a court of a State which has made a child custody or visitation determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.

(e) Before a child custody or visitation determination is made, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of a child.

(f) A court of a State may modify a determination of the custody of the same child made by a court of another State, if— (1) it has jurisdiction to make such a child custody determination; and (2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination.

(f) A court of a State may modify a determination of the custody of the same child made by a court of another State, if— (1) it has jurisdiction to make such a child custody determination; and (2) the court of the other State no longer

has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination.

(g) A court of a State shall not exercise jurisdiction in any proceeding for a custody or visitation determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody or visitation determination.

(h) A court of a State may not modify a visitation determination made by a court of another State unless the court of the other State no longer has jurisdiction to modify such determination or has declined to exercise jurisdiction to modify such determination.

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE

Section 7 of Pub. L. 96–611 provided that:

"(a) The Congress finds that— "(1) there is a large and growing number of cases annually involving disputes between persons claiming rights of custody and visitation of children under the laws, and in the courts, of different States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States; "(2) the laws and practices by which the courts of those jurisdictions determine their jurisdiction to decide such disputes, and the effect to be given the decisions of such disputes by the courts of other jurisdictions, are often inconsistent and conflicting; "(3) those characteristics of the law and practice in such cases, along with the limits imposed by a Federal system on the authority of each such jurisdiction to conduct investigations and take other actions outside

its own boundaries, contribute to a tendency of parties involved in such disputes to frequently resort to the seizure, restraint, concealment, and interstate transportation of children, the disregard of court orders, excessive relitigation of cases, obtaining of conflicting orders by the courts of various jurisdictions, and interstate travel and communication that is so expensive and time consuming as to disrupt their occupations and commercial activities; and "(4) among the results of those conditions and activities are the failure of the courts of such jurisdictions to give full faith and credit to the judicial proceedings of the other jurisdictions, the deprivation of rights of liberty and property without due process of law, burdens on commerce among such jurisdictions and with foreign nations, and harm to the welfare of children and their parents and other custodians.

"(b) For those reasons it is necessary to establish a national system for locating parents and children who travel from one such jurisdiction to another and are concealed in connection with such disputes, and to establish national standards under which the courts of such jurisdictions will determine their jurisdiction to decide such disputes and the effect to be given by each such jurisdiction to such decisions by the courts of other such jurisdictions.

"(c) The general purposes of sections 6 to 10 of this Act [enacting this section and section 663 of Title 42, The Public Health and Welfare, amending sections 654 and 655 Title 42, and enacting provisions set out as notes under this section, sections 663 and 1305 of Title 42, and section 1073 of Title 18, Crimes and Criminal Procedure] are to—

"(1) promote cooperation between State courts to the end that a determination of custody and visitation is rendered in the State which can best decide the case in the interest of the child;

"(2) promote and expand the exchange of information and other forms of mutual assistance between States which are concerned with the same child;

"(3) facilitate the enforcement of custody and visitation decrees of sister States;

"(4) discourage continuing interstate controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

"(5) avoid jurisdictional competition and conflict between State courts in matters of child custody and visitation which have in the past resulted in the shifting of children from State to State with harmful effects on their well-being; and

"(6) deter interstate abductions and other unilateral removals of children undertaken to obtain custody and visitation awards."

STATE COURT PROCEEDINGS FOR CUSTODY DETERMINATIONS; PRIORITY TREATMENT; FEES, COSTS, AND OTHER EXPENSES

Section 8(c) of Pub. L. 96–611 provided that:

"In furtherance of the purposes of section 1738A of title 28, United States Code, as added by subsection (a) of this section, State courts are encouraged to—

"(1) afford priority to proceedings for custody determinations; and

"(2) award to the person entitled to custody or visitation pursuant to a custody determination which is consistent with the provisions of such section 1738A, necessary travel expenses, attorneys' fees, costs of private investigations,

witness fees or expenses, and other expenses incurred in connection with such custody determination in any case in which—

"(A) a contestant has, without the consent of the person entitled to custody or visitation pursuant to a custody determination which is consistent with the provisions of such section 1738A, (i) wrongfully removed the child from the physical custody of such person, or (ii) wrongfully retained the child after a visit or other temporary relinquishment of physical custody; or "(B) the court determines it is appropriate."

STATE OF MAINE
REVISED STATUTES

Title 18-A, Article 5, Protection of Persons under Disability and Their Property

Part 1: GENERAL PROVISIONS

§5-101. Definitions and use of terms

Unless otherwise apparent from the context, in this Code:

(1-B) "De facto guardian" means an individual with whom, within the 24 months immediately preceding the filing of a petition under section 5-204, subsection (d), a child has resided for the following applicable period and during which period there has been a demonstrated lack of consistent participation by the parent or legal custodian:

(4) A "ward" is a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.

Appendix C

§5-102. Jurisdiction of subject matter; consolidation of proceedings (a) The court has exclusive jurisdiction over guardianship proceedings and has jurisdiction over protective proceedings to the extent provided in section 5-402

Part 3: SCOPE, JURISDICTION AND COURTS

§1-301. Territorial application

Except as otherwise provided in this Code, this Code applies to...[(3)] incapacitated persons and minors in this State,

§1-302. Subject matter jurisdiction

(a) To the full extent provided in sections 3-105, 5-102 and 5-402, the court has jurisdiction over all subject matter relating to...[(2)] protection of minors and incapacitated persons;

(b) The Court has full power to make orders, judgments and decrees and take all other action necessary and proper to administer justice in the matters which come before it.

§1-303. Venue; multiple proceedings; transfer

(a) Where a proceeding under this Code could be maintained in more than one place in this State, the court in which the proceeding is first commenced has the exclusive right to proceed.

(b) If proceedings concerning the same estate, protected person, ward, or trust are commenced in more than one court of this State, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.

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Part 2: GUARDIANS OF MINORS

§5-201. Status of guardian of minor; general

A person becomes a guardian of a minor by acceptance of a testamentary appointment or upon appointment by the court. The guardianship status continues until terminated, without regard to the location from time to time of the guardian and minor ward. This section does not apply to permanency guardians appointed in District Court child protective proceedings. If a minor has a permanency guardian, the court may not appoint another guardian without leave of the District Court in which the child protective proceeding is pending.

§5-204. Court appointment of guardian of minor; conditions for appointment

The court may appoint a guardian or coguardians for an unmarried minor if:

(a) All parental rights of custody have been terminated or suspended by circumstance or prior court order;

(b) Each living parent whose parental rights and responsibilities have not been terminated or the person who is the legal custodian of the unmarried minor consents to the guardianship and the court finds that the consent creates a condition that is in the best interest of the child;

(c) The person or persons whose consent is required under subsection (b) do not consent, but the court finds by clear and convincing evidence that the person or persons have failed to respond to proper notice or a living situation that has been created that is at least temporarily intolerable for the child even though the living situation does not rise to the level of jeopardy required for the final termination of parental rights, and that the proposed guardian will provide a

living situation that is in the best interest of the child; or

(d) The person or persons whose consent is required under subsection (b) do not consent, but the court finds by a preponderance of the evidence that there is a de facto guardian and a demonstrated lack of consistent participation by the nonconsenting parent or legal custodian of the unmarried minor. The court may appoint the de facto guardian as guardian if the appointment is in the best interest of the child.

If a proceeding is brought under subsection (c) or subsection (d), the nonconsenting parent or legal custodian is entitled to court-appointed legal counsel if indigent. In a contested action, the court may also appoint counsel for any indigent de facto guardian, guardian or petitioner when a parent or legal custodian has counsel.

§5-205. Court appointment of guardian of minor; venue

The venue for guardianship proceedings for a minor is in the place where the minor resides or is present.

§5-206. Court appointment of guardian of minor; qualifications; priority of minor's nominee

The court may appoint as guardian any person, or as coguardians more than one person, whose appointment is in the best interest of the minor. The court shall set forth in the order of appointment the basis for determining that the appointment is in the best interest of the minor. The court shall appoint a person nominated by the minor, if the minor is 14 years of age or older, unless the court finds the appointment contrary to the best interest of the minor. The court may not appoint a guardian for a minor child who will be removed from this State for the purpose of adoption

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§5-207. Court appointment of guardian of minor; procedure

(a) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor is to be given by the petitioner in the manner prescribed by court rule under section 1-401 to:

(1) The minor, if he is 14 or more years of age;

(2) The person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition; and

(3) Any living parent of the minor

(b) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section 5-204 have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the court may dismiss the proceedings, or make any other disposition of the matter that will best serve the interest of the minor.

(c) If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor, but the authority of a temporary guardian may not last longer than 6 months, except as provided in subsection (c-1). Notice of hearing on the petition for the appointment of a temporary guardian must be served as provided under subsection (a), except that the notice must be given at least 5 days before the hearing, and notice need not be given to any person whose address and present whereabouts are unknown and can not be ascertained by due diligence. Upon a showing of good cause, the court may waive service of the notice of hearing on any person, other than the minor, if the minor is at least 14 years of age.

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§5-211. Proceedings subsequent to appointment; venue

(a) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, over resignation, removal, accounting and other proceedings relating to the guardianship.

(b) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever is in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian must be sent to the court in which acceptance of appointment is filed.

Title 19-A Domestic Relations Part 1: General Provisions
Chapter 1: General Provisions

§103. Jurisdiction

Except as otherwise expressly provided, the District Court has original jurisdiction of all actions under this Title.

Title 19-A Domestic Relations, Part 3: Parents and Children
Chapter 55: Rights and Responsibilities

§1651. Parents joint natural guardians of children

The father and mother are the joint natural guardians of their minor children and are jointly entitled to the care, custody, control, services and earnings of their children. Neither parent has any rights paramount to the rights of the other with reference to any matter affecting their children.

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§1657. Modification or termination of orders for parental rights and responsibilities

3. Uniform Child Custody Jurisdiction and Enforcement Act. The jurisdiction granted by this section to make or alter an order concerning parental rights and responsibilities with respect to a minor child is limited by the Uniform Child Custody Jurisdiction and Enforcement Act, if another state may have jurisdiction as provided in that Act.

Title 19-A Domestic Relations, Part 3: Parents and Children
Chapter 58: Uniform Child Custody Jurisdiction and Enforcement Act (HEADING: PL 1999, c. 486, §3
§1731 - §1783
Subchapter 1: General Provisions

§1731. Short title

This chapter may be cited as the Uniform Child Custody Jurisdiction and Enforcement Act.

§1732. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Abandoned. "Abandoned" means left without provision for reasonable and necessary care or supervision.

2. Child. "Child" means an individual who has not attained 18 years of age.

3. Child custody determination. "Child custody determination" means a judgment, decree or other order of a court providing for the legal custody, physical custody or visitation with respect to a child. The term includes a permanent, temporary, initial and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

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4. Child custody proceeding. "Child custody proceeding" means a proceeding in which legal custody, physical custody or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation or enforcement under subchapter III.

5. Commencement. "Commencement" means the filing of the first pleading in a proceeding.

6. Court. "Court" means an entity authorized under the law of a state to establish, enforce or modify a child custody determination.

7. Home state. "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than 6 months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

8. Initial determination. "Initial determination" means the first child custody determination concerning a particular child.

9. Issuing court. "Issuing court" means the court that makes a child custody determination for which enforcement is sought under this chapter.

10. Issuing state. "Issuing state" means the state in which a child custody determination is made.

11. Modification. "Modification" means a child custody determination that changes, replaces, supersedes or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that

made the previous determination.

12. Person. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity.

13. Person acting as a parent. "Person acting as a parent" means a person, other than a parent, who:

A. Has physical custody of the child or has had physical custody for a period of 6 consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding; and

B. Has been awarded legal custody by a court or claims a right to legal custody under the law of this State.

14. Physical custody. "Physical custody" means the physical care and supervision of a child.

15. State. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

§1733. Proceedings governed by other law.

This chapter does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

§1749. Notice; opportunity to be heard; joinder

1. Notice and opportunity to be heard required. Before a child custody determination is made under this chapter, notice and an opportunity to be heard in accordance with the standards of section 1738 must be given to all persons entitled to notice under the law of this State as in child custody proceedings between residents of this State, any parent whose parental rights have not been previously

terminated and any person having physical custody of the child

2. Enforceability without notice and opportunity to be heard. This chapter does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

3. Joinder and intervention of parties. The obligation to join a party and the right to intervene as a party in a child custody proceeding under this chapter are governed by the law of this State as in child custody proceedings between residents of this State.

Title 19-A Domestic Relations, Part 3: Parents and Children
Chapter 58: Uniform Child Custody
Jurisdiction and Enforcement Act
Subchapter 2: Jurisdiction

§1746. Exclusive, continuing jurisdiction

1. Exclusive, continuing jurisdiction.

Except as otherwise provided in section 1748, a court of this State that has made a child custody determination consistent with section 1745 or 1747 has exclusive, continuing jurisdiction over the determination until:

A. A court of this State determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with this State and that substantial evidence is no longer available in this State concerning the child's care, protection, training and personal relationships; or

B. A court of this State or a court of another state determines that the child, the child's parents and any person acting as a parent do not presently reside in this State.

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2. Modification without exclusive, continuing jurisdiction. A court of this State that has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under section 1745.

§1747. Jurisdiction to modify determination.
Except as otherwise provided in section 1748, a court of this State may not modify a child custody determination made by a court of another state unless a court of this State has jurisdiction to make an initial determination under section 1745, subsection 1, paragraph A or B and:
1. Jurisdiction of other state; more convenient forum. The court of the other state determines it no longer has exclusive, continuing jurisdiction under section 1746 or that a court of this State would be a more convenient forum under section 1751; or
2. Examination of documents; communication with court. Except as otherwise provided in section 1748, a court of this State, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to section 1753. If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this chapter, the court of this State shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this chapter does not determine that the court of this State is a more appropriate forum, the court of this State shall dismiss the proceeding.

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§1750. Simultaneous proceedings

1. Pending proceeding in another state. Except as otherwise provided in section 1748, a court of this State may not exercise its jurisdiction under this subchapter if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this chapter, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this State is a more convenient forum under section 1751.

§1753. Information to be submitted to court

4. Continuing duty to inform court. Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

Title 19-A Domestic Relations, Part 3: Parents and Children
Chapter 58: Uniform Child Custody Jurisdiction and Enforcement Act

Subchapter 3: Enforcement

§1761. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Petitioner. "Petitioner" means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

2. Respondent. "Respondent" means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

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§1763. Duty to enforce

2. Remedies. A court of this State may utilize any remedy available under other law of this State to enforce a child custody determination made by a court of another state. The remedies provided in this subchapter are cumulative and do not affect the availability of other remedies to enforce a child custody determination.

§1765. Registration of child custody determination

1. Registration procedure. A child custody determination issued by a court of another state may be registered in this State, with or without a simultaneous request for enforcement, by sending to the appropriate court in this State:

A. A letter or other document requesting registration;

B. Two copies, including one certified copy, of the determination sought to be registered and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

C. Except as otherwise provided in section 1753, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.

2. Filing and notice. On receipt of the documents required by subsection 1, the registering tribunal shall:

A. Cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

B. Serve notice upon the persons named pursuant to subsection 1, paragraph C and provide them with an opportunity to contest the registration in accordance with this

section.

3. Information in notice. The notice required by subsection 2, paragraph B must state that:

A. A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this State

B. A hearing to contest the validity of the registered determination must be requested within 20 days after service of notice; and

C. Failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

4. Hearing to contest. A person seeking to contest the validity of a registered order must request a hearing within 20 days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

A. The issuing court did not have jurisdiction under subchapter II;

B. The child custody determination sought to be registered has been vacated, stayed or modified by a court having jurisdiction to do so under subchapter II; or

C. The person contesting registration was entitled to notice, but notice was not given in accordance with the standards of section 1738, in the proceedings before the court that issued the order for which registration is sought

5. Confirmation of registration. If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

6. Further contest precluded. Confirmation of a registered

order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

§1767. Simultaneous proceedings

If a proceeding for enforcement under this subchapter is commenced in a court of this State and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under subchapter II, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

§1768. Expedited enforcement of child custody determination

1. Petition for enforcement verified. A petition under this subchapter must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

MAINE COURT RULES OF PROBATE PROCEDURE

MAINE RULES OF PROBATE PROCEDURE

(Including amendments through
those effective January 1, 2003)

I. SCOPE OF RULES--FORM OF PROCEEDINGS.

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RULE 1. SCOPE OF RULES

These rules govern the procedure in all proceedings in the Probate Courts, with the limitations stated in Rule 81. These rules also govern the procedure on removal from the Probate Courts to the Superior Court and in appeals from the Probate Courts to the Supreme Judicial Court sitting as the Law Court. The rules shall be construed to secure the just, speedy, and inexpensive determination of every proceeding

RULE 2. FORM OF PROCEEDINGS

There shall be two forms of proceedings to be known as "probate proceedings" and "civil proceedings."

(a) Probate Proceedings. "Probate proceedings" are all proceedings within the exclusive jurisdiction of the Probate Courts.

(1) *Informal Probate Proceedings.* "Informal probate proceedings" are proceedings for the informal probate of a will or the informal appointment of a personal representative brought under the authority of Article III of the Probate Code.

(2) *Formal Probate Proceedings.* "Formal probate proceedings" are all other probate proceedings.

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RULE 4. NOTICE; PROCESS

(a) Form of Notice and Summons.

(1) *Notice in Probate Proceedings.*

(B) In formal probate proceedings, the notice shall bear the signature or facsimile signature of the register, contain the name of the court and the name of the decedent or minor or incapacitated or disabled person, be directed to the recipient by name if known, state the name and address and telephone number of the petitioner or of the petitioner's attorney, state the date and place of hearing or reply if either is required, and advise the recipient that the action or order sought may be granted if no interested person appears to object.

(b) Issuance of Notice and Summons.

(1) *Probate Proceedings.*

(B) In formal probate proceedings, the notice may be procured in blank from the register and filled out by the petitioner or the petitioner's attorney as provided in subparagraph (a)(1)(B) of this rule. Alternatively, if the notice is to be served by the register as provided in subparagraph (c)(1)(B) of this rule, the notice shall be filled out by the register. If the notice is to be served personally, the attorney shall deliver to the person serving it the original notice upon which to make his return of service and a copy of the notice and petition for service. If the will is annexed to

the petition, the copy of the petition to be served need not include the will.

(c) By Whom Served.

(1) *Probate Proceedings.*

(B) In formal probate proceedings, service by mail shall be made by the petitioner or the petitioner's attorney or by the register on the petitioner's behalf. Personal service shall be made by a sheriff or a deputy within the sheriff's county, or by a constable or other person authorized by law, or by some person specially appointed by the court, except that a subpoena may be served as provided in Rule 45. Special appointments to serve process shall be made freely when substantial savings in travel fees will result. Service by publication shall be made by the register on behalf of the petitioner unless otherwise ordered by the court. When service by any method is to be made by the register, the petition shall contain a written request for such service, accompanied by a tender of fees and a list of persons to be served and their addresses if known.

(d) Service of Notice and Summons.

(1) *Probate Proceedings.* In probate proceedings, the notice and, where appropriate, the petition shall be served together by one of the following methods:

(B) In formal probate proceedings, except as otherwise provided by statute, the notice and petition shall be served by certified mail, with restricted delivery and return receipt requested, upon all persons upon whom service is required by statute, including any person who has made a

demand for notice as provided in Rule 4D. The mailing shall be addressed to the recipient at the post office address given in the recipient's demand for notice, if any, or at the recipient's office or place of residence. Service by certified mail is complete when the mail is delivered and the receipt signed or when acceptance is refused or unclaimed, provided that the petitioner or register shall file either the return receipt or, if acceptance was refused or unclaimed, an affidavit that upon notice of such refusal or failure to claim a copy of the notice and petition was sent to the party being served by ordinary mail. Alternatively, the notice and petition may be served upon any of such persons personally, and shall be so served if statute requires, by any method provided in subdivisions (d) or (e) of Rule 4 of the Maine Rules of Civil Procedure for service of process in civil actions. Service shall also be made by publication as provided in subdivision (e) of this rule upon any such persons whose address or present whereabouts is unknown and cannot be ascertained by due diligence and, in any other proceeding on request of the petitioner, upon all unknown persons.

(f) Proof of Notice; Return of Service.

(1) *Probate Proceedings.* In informal probate proceedings, the findings made and signed by the register representing that notice has been given shall constitute an affidavit of notice. In formal probate proceedings, where the notice is served by mail or publication, the statement of the register or the petitioner or the petitioner's attorney, appended to or filed with a copy of the notice, setting forth the means by which service was made upon each person served, and accompanied by any documentary evidence that service was completed, shall constitute an affidavit of notice.

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Where the notice is served personally, proof of service shall be made as provided for civil proceedings in paragraph (2) of this subdivision.

RULE 12. DEFENSES AND OBJECTIONS: WHEN AND HOW PRESENTED BY PLEADING OR MOTION; MOTION FOR JUDGMENT ON THE PLEADINGS

(2) *Formal Testacy, Appointment Proceedings and Change of Name Proceedings.* In formal probate proceedings for the determination of testacy, the appointment of a personal representative, guardian or conservator, or a change of name, the notice of hearing shall set a date for hearing which shall be at least 14 days after the first publication of notice under Rule 4 (e)(1) or at least 14 days after the completion of service upon all persons to be served by other means, whichever is later. Any interested person may at or before the hearing file a written reply stating objections to the action or order sought in the petition or stating any other matter which the person wishes to raise or the person may state such objections or other matter in an oral reply at the hearing. If a party who opposes the probate of a will for any reason makes an oral reply stating the party's objections thereto, the party shall file a written reply setting forth those objections within such time after the hearing as the court may order. If a party states any other objections or matter in an oral reply, the court may order the party to file a written reply specifically stating such objections or matter within such time after the hearing as may be just. If a written reply is filed at any time, the hearing may be continued as to all issues involved in the objections or other matter there stated for a period sufficient to allow all parties fairly to be heard on those issues.

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STATE OF NEW HAMPSHIRE
REVISED STATUTES ANNOTATED
STATE STATUTE LAW

TITLE LI: Courts
Chapter 490-D - Judicial Family Branch Division

Section 490-D:1 Judicial Branch Family Division Established.

The general court hereby organizes, constitutes, and establishes the judicial branch family division.

Section 490-D:2 Jurisdiction.

Notwithstanding any law to the contrary and except for the limited need to allow an existing case to proceed with the same judge who had presided over it before the implementation of the judicial branch family division, following implementation of the division at a division site in accordance with RSA 490-D:5, jurisdiction over the following matters shall be exclusively exercised through the judicial branch family division as procedurally jurisdiction was previously exercised in the superior, district, and probate courts:

I. Petitions for divorce, nullity of marriage, alimony, custody of children, support, and to establish paternity.

VIII. The guardianship of the person of minors. In cases involving the guardianship of both the person of a minor and the estate of the same minor, jurisdiction shall remain with the probate court.

Section 490-D:3 Equity Jurisdiction.

Notwithstanding any law to the contrary, the judicial branch family division shall have the powers of a court of

equity in cases where subject matter jurisdiction lies with the judicial branch family division. Suits in equity where subject matter jurisdiction lies with the judicial branch family division including, but not limited to, petitions for divorce, nullity of marriage, alimony, custody of children, support, and other similar proceedings may be heard upon oral testimony or depositions, or both, or when both parties consent, or service having been made and a notice of the time and place of the hearing having been given, when both parties appear.

Section 490-D:9 Recommendations of Marital Masters.

All recommendations of marital masters shall be signed by a judge.

TITLE XLIII: Domestic Relations
Chapter 458: Annulment, Divorce and Separation

Section 458:17 I. Support and Custody of Children
[Repealed 2005, 273:20, II, eff. Oct. 1, 2005.]

In all cases where there shall be a decree of divorce or nullity, the court shall make such further decree in relation to the support, education, and custody of the children as shall be most conducive to their benefit and may order a reasonable provision for their support and education for the period of time specified in RSA 458:35-c. All such support orders shall provide for the assignment of the wages of the responsible parent pursuant to RSA 458-B, including the exceptions listed in RSA 458-B:2.

Section 458:17, V
[Repealed 2005, 273:20, II, eff. Oct. 1, 2005.]

(a) The court may issue an order modifying a permanent custody order under any of the following circumstances:

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(1)The parties agree to a modification;

Section 458:17, VI
[Repealed 2005, 273:20, II, eff. Oct. 1, 2005.]

In making any order relative to such custody, the court shall not give any preference to either parent of the children because of the parent's sex. The paramount and controlling consideration in deciding child custody is the overall welfare of the child, and there is no one formula for all cases, each case being determined by its particular facts. Considerable weight may be given to the stated preference of a mature minor, provided that preference was not unduly influenced. If the court determines that it is in the best interest and welfare of the children, it shall in its decree grant reasonable visitation privileges to a party who is a stepparent of the children or to the grandparents of the children pursuant to RSA 458:17-d. Nothing in this paragraph shall be construed to prohibit or require an award of custody to a stepparent or grandparent if the court determines that such an award is in the best interest of the child.

TITLE XLIII: Domestic Relations
Chapter 458-A: Uniform Child Custody Jurisdiction Act

Section 458-A:1 Purposes of Chapter; Construction of Provisions

For text of Uniform Act, and variation notes and annotation materials for adopting jurisdictions, see Uniform Laws Annotated, Master Edition, Volume 9, Part IA.

I. The general purposes of this chapter are to:

(a) Avoid jurisdictional competition and conflict with courts of other states in matters of child custody

which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

(b) Promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;

(c) Assure that litigation concerning the custody of a child take place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state;

(d) Discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

(e) Deter abductions and other unilateral removals of children undertaken to obtain custody awards;

(f) Avoid re-litigation of custody decisions of other states in this state insofar as feasible;

(g) Facilitate the enforcement of custody decrees of other states;

(h) Promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child;

(i) Make uniform the law of those states which enact it.

II. This chapter shall be construed to promote the general purposes stated in this section.

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Section 458-A:2 Definitions. In this chapter:

I. ""Contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child.

II. ""Custody determination" means a court decision and court orders and instructions providing for the temporary or permanent custody of a child, including the allocation of parental rights and responsibilities under RSA 461-A.

III. ""Custody proceeding" includes proceedings in which a custody determination is at issue or is one of several issues, including any action or proceeding brought to annul a marriage or to declare the nullity of a void marriage, or for a separation, or for a divorce, or for an allocation of parental rights and responsibilities, or relative to the guardianship of a minor, but not including proceedings for adoption, child protective proceedings or proceedings for permanent termination of parental custody, or proceedings involving the guardianship and custody of children found to be neglected or dependent pursuant to RSA 169-B, 169-C, or 169-D.

IV. ""Decree" or ""custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding, and includes an initial decree and a modification decree.

V. ""Home state" means the state in which the child at the time of the commencement of the custody proceeding has resided with his parents, a parent, or a person acting as parent, for at least 6 consecutive months. In the case of a child less than 6 months old at the time of the commencement of the proceeding, ""home state" means the state in which the child has resided with any of such persons for a majority of the time since birth.

VI. ""Initial decree" means the first custody decree concerning a particular child.

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VII. ""Modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court.

VIII. ""Physical custody" means actual possession and control of a child.

IX. ""Person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody.

X. ""State" means any state, territory or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

Section 458-A:3 Jurisdiction to Make Child Custody Determinations.

I. A court of this state which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree only when: (a) This state (1) is the home state of the child at the time of commencement of the custody proceeding; or (2) has been the child's home state within 6 months before commencement of such proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as parent continues to live in this state; or

(b) It is in the best interest of the child that a court of this state assume jurisdiction because (1) the child and his parents, or the child and at least one contestant, have a significant connection with this state, and (2) there is within the jurisdiction of the court substantial evidence concerning

the child's present or future care, protection, training, and personal relationships; or

(c) The child is physically present in this state and (1) the child has been abandoned or (2) it is necessary in an emergency to protect the child; or

(d) (1) It appears that no other state would have jurisdiction under prerequisites substantially in accordance with subparagraph (a), (b), or (c), or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child, and (2) it is in the best interest of the child that this court assume jurisdiction.

II. Except under subparagraphs I(c) and (d), physical Presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

III. Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

Section 458-A:12 Force and Effect of Custody Decrees.

A custody decree rendered by a court of this state which had jurisdiction under RSA 458-A:3 shall be binding upon all parties who have been personally served in this state or notified pursuant to RSA 458-A:5 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to these parties, the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this chapter.

Section 461-A:20 References to Child Custody and Custodial Parent. –

Appendix C

Any provision of law that refers to the ""custody" of minor children shall mean the allocation of parental rights and responsibilities as provided in this chapter. [Source. 2005, 273:1, eff. Oct. 1, 2005

Section 458-A:4 Notice and Opportunity to be Heard.

Before making a decree under this chapter, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons is outside the state, notice and opportunity to be heard shall be given pursuant to RSA 458-A:5. Any person who is given notice and an opportunity to be heard pursuant to this section shall be deemed a party to the proceeding for all purposes under this chapter.

Section 458-A:9 Pleadings and Affidavits; Duty to Inform Court

III. If, during the pendency of a custody proceeding, any party learns of another custody proceeding concerning the child in this or another state, he shall immediately inform the court of this fact.

Section 458-A:10 Additional Parties.

If the court learns from information furnished by the parties pursuant to RSA 458-A:9, or from other sources, that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his joinder as a party. If the person joined as a party is outside this state, he shall be served with

process or otherwise notified in accordance with RSA 458-A:5.

TITLE XLIII: Domestic Relations
Chapter 461-A: Parental Rights and Responsibilities

Section 461-A:1 Definitions. In this chapter:

I. ""Decision-making responsibility" means the responsibility to make decisions for the child. It may refer to decisions on all issues or on specified issues.

IV. ""Parental rights and responsibilities" means all rights and responsibilities parents have concerning their child.

Section 461-A:2 Statement of Purpose. –

I. Because children do best when both parents have a stable and meaningful involvement in their lives, it is the policy of this state, unless it is clearly shown that in a particular case it is detrimental to a child, to:

(a) Support frequent and continuing contact between each child and both parents.

(b) Encourage parents to share in the rights and responsibilities of raising their children after the parents have separated or divorced.

(c) Encourage parents to develop their own parenting plan with the assistance of legal and mediation professionals, unless there is evidence of domestic violence, child abuse, or neglect.

(d) Grant parents and courts the widest discretion in developing a parenting plan.

(e) Consider both the best interests of the child in light of the factors listed in RSA 461-A:6 and the safety of the parties in developing a parenting plan.

Appendix C

II. This chapter shall be construed so as to promote the policy stated in this section. [Source. 2005, 273:1, eff. Oct. 1, 2005].

Section 461-A:3 Procedure and Jurisdiction.

I. The procedure in cases concerning parental rights and responsibilities, including child support, shall be the same as the procedure for petitions for divorce and legal separation under RSA 458.

II. In cases where husband and wife or unwed parents are living apart, the court, upon petition of either party, may make such order as to parental rights and responsibilities and support of the children as justice may require. All applicable provisions of this chapter and of RSA 458-A, 458-B, 458-C, and 458-D shall apply to such proceedings.

III. The jurisdiction granted by this section shall be limited by the Uniform Child Custody Jurisdiction Act, if another state has jurisdiction as provided in that act.

Section 461-A:11 Modification of Parental Rights and Responsibilities. –

I. The court may issue an order modifying a permanent order concerning parental rights and responsibilities under any of the following circumstances:

(a) The parties agree to a modification.

Section 461-A:20 References to Child Custody and Custodial Parent. – Any provision of law that refers to the ""custody" of minor children shall mean the allocation of parental rights and responsibilities as provided in this chapter. [Source. 2005, 273:1, eff. Oct. 1, 2005.]

Appendix C

CHAPTER 463 GUARDIANSHIP OF MINORS AND ESTATES OF MINORS

Section 463:2 Definitions. –In this chapter:
II. ""Court" means the probate court unless otherwise specified.
V. ""Minor" means a child under 18 years of age who is unmarried and unemancipated.
VI. ""Parent" means mother, father, or adoptive parent, but such term shall not include a parent as to whom the parent-child relationship has been terminated by judicial decree or voluntary relinquishment.

Section 463:3 Parents' Rights. – I. The father and mother of every minor are joint guardians of the person of such minor, and the powers, rights, and duties of the father and mother in regard to such minor shall be equal. Upon the death of either parent, the survivor shall be the sole guardian of the person of the minor.

Section 463:4 Jurisdiction and Venue. –
I. The probate court shall have exclusive jurisdiction over the appointment of a guardian of the person or of the estate or of both of any minor. The jurisdiction of the court in this chapter shall be subject to the provisions of RSA 458-A.
II. (a) Venue for guardianship proceedings for a minor is in the county where the minor resides, the county where the minor is physically present when the proceedings are commenced, the county in which the authorized agency is providing services to the minor, or the county in which an underlying cause of action arose.

Appendix D

STATE OF NEW HAMPSHIRE DEPARTMENT OF HEALTH AND HUMAN SERVICES DIVISION OF CHILDREN, YOUTH & FAMILIES, SALEM DISTRICT OFFICEDATED JUNE 5, 2006

STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
SALEM DISTRICT OFFICE
154 MAIN STREET, SUITE 1, SALEM, NH 03079-3191
603-893-9763 1-800-852-7492 Fax: 603-890-6691
TDD Access: 1-800-735-2964

June 05, 2006

Jeffrey Gray
283 Shore Drive
Salem, NH 03079

Dear Mr. Gray

I am writing to inform you that your family's assessment with the New Hampshire Division for Children, Youth and Families has been completed. **THE DETERMINATION IS UNFOUNDED.**

Your cooperation was appreciated.

If you have any further questions, do not hesitate to call me at (603) 893-9763.

Sincerely,
/s/ Daryl Bazydlo
Daryl Bazydlo, New Hampshire Division for Children, Youth and Families Child Protective Service Worker

Appendix D

ORDER OF
SALEM DISTRICT COURT
FAMILY DIVISION AT SALEM
DATED MAY 1, 2006
IN DOCKET NO. 2006-G-010 & 2006-G-011
IN THE MATTER OF:
JONATHON AND LEEANNA EVELYN GRAY

THE STATE OF NEW HAMPSHIRE
Family Division At Salem

IN THE MATTER OF:
Jonathon Gray and Leeanna Evelyn Gray
2006-G-010 and 2006-G-011

ORDER ON EX PARTE MOTION

Lisa A. Sorenson of Biddeford, Maine was awarded temporary guardianship over Jonathon Gray (dob 4/22/96) and Leeanna Evelyn Gray (dob 7/18/97) by order of the York County Probate Court dated February 10, 2006. Ms. Sorenson has filed petitions to register these guardianships in the State of New Hampshire, which matter is pending.

Ms. Sorenson has filed an ex parte motion to enforce the temporary guardianships in the State of New Hampshire in order that she may properly take the children back to the State of Maine, which has been determined by the courts in Maine and New Hampshire to the be the home state.

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The ex parte motion of Ms. Sorenson is granted. Any law enforcement is authorized to assist Ms. Sorenson as necessary in safely and peaceably removing the children back to the State of Maine.

So ordered. May 1, 2006 /s/ John A. Korbey, Justice

Appendix D

ORDER OF THE SUPREME COURT OF NEW HAMPSHIRE DATED APRIL 3, 2006 IN CASE NO. 2004-0738 *IN THE MATTER OF JEFFREY M. GRAY AND JANETTE L. GRAY*

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0738, In the Matter of Jeffrey Gray and Janette Gray., the court on April 3, 2006, issued the following order:

On February 13, 2006, the clerk issued the mandate in this case returning jurisdiction of this matter to the Salem Family Division. The father's ex parte motion for enforcement of the custody decree is denied without prejudice to the father seeking relief in the family division. The father's motion to show cause is denied.

This order is entered by a single justice (Galway, J). See Rule 21(7).

Eileen Fox,
Clerk

Distribution:Judicial Branch-Family Division at Salem#1999-M0183,Hon. Patricia DiMeo
Mr. Jeffrey Gray, Paula Werme, Esq.,
James C. McCoy III, Esq.,Ms. Janette Piela (Gray), Ms. Lisa Sorenson,Mary Ann Callanan, Esquire,Mary Ann Pilkington-Casey, Esquire,

Appendix D

ORDER OF SALEM DISTRICT COURT FAMILY DIVISION AT SALEM DATED MARCH 1, 2006 IN DOCKET NO. 1999-M-0183 *IN THE MATTER OF JEFFREY M. GRAY AND JANETTE L. GRAY*

THE STATE OF NEW HAMPSHIRE
Judicial Branch-Family Division
Rockingham County
Salem New Hampshire

Dockett#1999-M-0183

IN THE MATTER OF:
Jeffrey M. Gray and Janette L. Gray

ORDER

The Court has been informed that the Interveners have filed Guardianship in the State of Maine and that the Petitioner has filed a custody action in Maine. This court defers jurisdiction to the State of Maine.

Date: 2/27/06 /s/ Bruce F. DalPra
Marital Master

Masters recommendation is approved and ordered.

Date: 3-1-06 /s/ John A. Korbey
Judge

Appendix D

ORDER OF
SALEM DISTRICT COURT
FAMILY DIVISION AT SALEM
DATED JANUARY 30, 2006
IN DOCKET NO. 1999-M-0183
IN THE MATTER OF
JEFFREY M. GRAY AND JANETTE L. GRAY

THE STATE OF NEW HAMPSHIRE
Judicial Branch – Family Division

ROCKINGHAM, SS Salem Family Division
1999-M-0183

IN THE MATTER OF:
Jeffrey M. Gray and Janette L. Gray

ORDER

RECOMMENDED:

1. The Show Cause hearing scheduled for February 2, 2006 is continued.

2. This matter shall be scheduled for an appropriated hearing after the court has received the certified Order from the NH Supreme Court.

Date: Jan. 30, 2006 /s/ Bruce F. DalPra
Marital Master

Date: 1/30/06 /s/ John A. Korbey
Presiding Justice

Appendix D

JEFFREY M. GRAY'S MOTION TO VACATE CUSTODY ORDER GRANTING LEGAL CUSTODY TO LISA SORENSON AND RETURN CHILDREN TO FATHER FROM RELATIVE CUSTODY DATED AND FILED JANUARY 27, 2006 SALEM DISTRICT COURT FAMILY DIVISION AT SALEM IN DOCKET NO. 1999-M-0183

IN THE MATTER OF JEFFREY M. GRAY AND JANETTE L. GRAY

THE STATE OF NEW HAMPSHIRE
Judicial Branch – Family Division

ROCKINGHAM, SS Salem Family Division
1999-M-0183

IN THE MATTER OF:
JEFFREY M. GRAY AND JANETTE L. GRAY

AMENDED MOTION TO VACATE CUSTODY ORDER GRANTING LEGAL CUSTODY TO LISA SORENSON AND RETURN CHILDREN TO FATHER FROM RELATIVE CUSTODY

NOW COMES Jeffrey M. Gray, by and through his attorney, Paula J. Werme, and respectfully OBJECTS to Lisa Sorenson's MOTION FOR FINDING OF CONTEMPT. In support of said OBJECTION, Petitioner states the following;

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1. This Court ORDERED legal and physical custody of the children to be placed with Lisa Sorenson on 10/15/04 based on a report from the Guardian ad Litem that the father and hotel following "an altercation" in the "Girlfriend's" home.

2. Although a mandated reporter under RSA 169-C:29, it is not known whether or not Attorney Callanan reported that the children were neglected or abused by living in a hotel with the father. Living in a hotel is not reportable child neglect under the Child Protection Statute.

3. The father no longer lives in a hotel, and has a home where he can take his children.

4. On December 30, 2005, the NH Supreme Court decided the case of In the Matter of R.A and J.M.. In that case, Chief Justice Broderick opined that the NH Custody Statute in effect at the time of this Court's ORDER was constitutional under Troxel v. Granville, 530 U.S. 57 (2000) because

> "is much more limited in scope than in Troxel. Paragraph VI allows a court to grant intervention by, and award custody to, only two classes of people – a child's stepparents and grandparents, RSA 458:17, VI. This limitation falls within our holding in Nelson where we **refused to grant standing to an 'unrelated third party.'** Nelson, 149 N.H. at 549. Additionally, stepparents and grandparents may only petition for custody by intervening in an already existing custody

> dispute incident to divorce or nullity, or as we have just held, in a custody dispute between unwed parents. *See* RSA 458:14, VI."

In effect, the NH Supreme Court clarified its decision in Nelson in light of Troxel to prohibit the award of custody over the objection of parents to any third party except grandparents and step-parents. Ms. Sorenson is such an "unrelated third person" with no standing in litigation between the parents of these two children.

5. In this case, the Guardian ad Litem, having concerns about the welfare of the children in the custody of the father petitioned this court and recommended a non party, not an intervener in the matter, be awarded custody of the children. Presumably, this was in lieu of her statutory duty to report child abuse or neglect to DCYF under RSA 169-C:29.

6. Since the NH Supreme Court has made it clear in R.A. and J.M. that it is inconsistent with the fundamental nature of parental rights to award legal or physical custody of children to persons other than grandparents or stepparents and only to them with an already existing in *loco parentis* relationship with the child, this Court's award of legal custody of the children to an aunt without such a pre-existing relationship violates the parents' fundamental rights.

7. As between the parents, this Court has made clear that Mr. Gray is a more appropriate custodian, in that he has been an active advocate for the children's educational

needs, he is willing to promote a close relationship between the mother and the children, and has a home for the children to go.

8. Mr. Gray's own case is still pending in the N.H. Supreme Court, however, it was argued before the justices on the same day right before the case of In the Matter of R.A. and J.M. It is unlikely that the Court will overturn its own recently decided case and expand its narrowing construction of the statute analyzed under scruntiny to permit legal custody to be placed with the children's aunt since both cases were before it at the time of the decision in R.A. and J.M.

9. The facts in this case demonstrate that shared legal and physical custody is unworkable for the children in this situation. The children need the stability of one parent making decisions concerning their welfare. Petitioner has the history of providing a stable environment for the children, actively advocating for their educational needs, and cooperation with the mother on matters such as visitation and contact. The Respondent as a history of not cooperation with the Petitioner on these matters.

WHEREFORE, Petitioner respectfully requests the following relief:

A. That this Court vacate its ORDER dated 10/15/04 giving custody of the children to Lisa Sorenson for lack of standing, and vacate all other orders for support, orders denying parents contact or visitation or other such orders for lack of jurisdiction to make said ORDERS under RSA 458:17 or RSA.

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B. Ordering sole legal and physical custody be vested with the Petitioner, Jeffrey Gray, with appropriate child support ORDERS. Mr. Gray will submit prior to final hearing on this MOTION a "Parenting Plan" and other child support documents pursuant to Court requirements.

C. For other and such relief as may be just.

Respectfully submitted by and through his attorney.

Jeffrey M. Gray

Date: January 27, 2006

/s/ Paula J. Werme
Paula J. Werme, Esq.
83 N. Main St.
Boscawen, NH 03303
753-9384

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was sent to Janette L. Silva Piela, 2330 Pleasant St., P.O. Box 45 Dighton, MA 04005, Mary Ann Callanan, Esq, GAL, 1650 Elm St. Suite 301, Manchester, NH 03301, and NH OCSE, Salem District Office, 154 Main Street, Suite 1, Salem, NH 03079-3191 on this date, 2006.

Date: January 27, 2006

/s/ Paula J. Werme
Paula J. Werme, Esq.

Note: Due to the Supreme Court Decision this date stating that this Court has no jurisdiction to award custody of the children to Lisa Sorenson, she has been removed from Certificate of Service, as it is now clear that she is not a party to the case.

Appendix D

ORDER OF THE SUPREME COURT OF NEW HAMPSHIRE DATED JANUARY 27, 2006 IN CASE NO. 2004-0738 *IN THE MATTER OF JEFFREY M. GRAY AND JANETTE L. GRAY*

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

MANDATE
Certified and
Issued as Mandate
Under N.H. Sup. Ct. R. 24
/s/Carol A. Belmain
Deputy Clerk
Date: 2 / 13 / 06

A TRUE COPY.
ATTEST /s/Carol A. Belmain
Clerk of the New
Hampshire
Supreme Court
1 Page

In Case No. 2004-0738, In the Matter of Jeffrey Gray and Janette Gray., the court on January 27, 2006, issued the following order:

Jeffrey G. has filed the following motions: (1) motion for leave to transfer record of trial court's evidentiary hearings; (2) motion for ruling on petitioner's motion for leave to transfer the trial court's record; (3) motion for children's therapist report and recommendations to be sufficient alone for appellant review; and (4) motion for partial remand. In light of the opinion issued by the court in this matter on this date, these four motions are dismissed as moot.

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This order is entered by a single justice (Galway, J.). See Rule 21(7).

Eileen Fox,
Clerk

Distribution:
Judicial Branch-Family Division at
Salem#1999-M0183, Hon. Patricia DiMeo
Mr. Jeffrey Gray,
Ms. Janette Piela (Gray).
Ms. Lisa Sorenson,
James C. McCoy III, Esquire,
Mary Ann Callanan, Esquire
Mary Ann Pilkington-Casey, Esquire,
File

Appendix D

OPINION
SUPREME COURT OF NEW HAMPSHIRE
DATED JANUARY 27, 2006,
CERTIFIED AND ISSUED AS MANDATE TO
SALEM DISTRICT COURT
FAMILY DIVISION AT SALEM
ON FEBRUARY 13, 2006
IN CASE NO. 2004-0738
IN THE MATTER OF
JEFFREY M. GRAY AND JANETTE L. GRAY
REPORTED AT 153 N.H. 200 (2006)

NOTICE: This opinion is subject to motions for rehearing under Rule 22 as well as formal revision before publication in the New Hampshire Reports. Readers are requested to notify the Reporter, Supreme Court of New Hampshire, One Noble Drive, Concord, New Hampshire 03301, of any editorial errors in order that corrections may be made before the opinion goes to press. Errors may be reported by E-mail at the following address: reporter@courts.state.nh.us. Opinions are available on the Internet by 9:00 a.m. on the morning of their release. The direct address on the court's home page is: http:/www.courts.state.nh.us/supreme.

THE SUPREME COURT OF NEW HAMPSHIRE

Family Division at Salem
No. 2004-738

A TRUE COPY
ATTEST /s/Carol A. Belmain
Clerk of the New Hampshire
Supreme Court 6 Pages

MANDATE
Certified and Issued
as Mandate Under N.H. Sup. Ct. R. 24
/s/Carol A. Belmain Deputy Clerk Date: 2 / 13 / 06

Appendix D

IN THE MATTER OF JEFFREY G. AND JANETTE P.

Argued: September 29, 2005
Opinion Issued: January 27, 2006

Jeffrey G., by brief and orally, pro se.
Janette P., by brief, pro se.
Lisa S., by brief, pro se.
Mary Pilkington-Casey, of Concord, by brief, for the Franklin Pierce Administrative Law and Advocacy Clinic, as amicus curiae.

GALWAY, J. The petitioner, Jeffrey G., appeals the Trial Court's (DiMeo, J.) order granting primary physical custody of two minor children to Lisa S., the children's paternal aunt, arguing that it violated his constitutional right to make decisions concerning the care, custody, and control of his children. We reverse and remand.

The record supports the following facts. Jeffrey G. and Janette P. are the parents of J.G., born in 1996, and L.G., born in 1997. They were granted a divorce on August 7, 2002, after a three-day contested hearing in the Family Division at Salem. Both Jeffrey G. and Janette P. were represented by counsel, and a Guardian Ad Litem (GAL) represented the children's interests. The issue of the children's custody has been intensely disputed since the parents' initial separation in 1998.

Throughout the pendency of the couple's divorce and post-divorce proceedings, three different GALs have represented the children's interests. Prior to the final

divorce decree, Jeffrey G. had primary physical custody of the children from approximately October 1999 through August 2002. Prior to the final divorce hearing, the GAL filed a report documenting the parents' turbulent history together, much of which arose from and/or affected custody arrangements pertaining to the children. In the final divorce decree, the Trial Court (Taube, J.) awarded Janette P. sole legal custody and primary physical custody of the two children, while granting Jeffrey G. "reasonable physical custodial rights," including liberal visitation as detailed in the decree.

The parents' acrimonious and volatile relationship continued to deteriorate and reportedly had a negative impact on all parties, including the children. Both parents filed multiple motions and petitions with the trial court, which were addressed in a subsequent custody modification hearing conducted in June 2004. Prior to that hearing, the third GAL filed a written report, dated March 11, 2004, which, among other things, revealed that: (1) both parents had violated conditions and provisions contained in the divorce decree; (2) during 2003, both parents were involved in four assessments by child reporting agencies in Massachusetts and New Hampshire, one of which resulted in a finding of neglect against Janette P.; and (3) the children received inconsistent counseling and their behavioral, health and educational needs were affected by the lack of cooperation and hostility between their parents. Despite her conclusion that the children were being harmed by the parents' behavior, the GAL recommended that they share joint legal custody and that Janette P. retain physical custody of the children.

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In June 2004, the court conducted a modification of custody hearing. Over two days, the trial court heard evidence, including testimony from the children's therapist and the GAL. After the completion of the first two days of testimony, but prior to the conclusion of the hearing, the court issued an order, acknowledging its "grave concerns about the emotional, physical and mental health of the children," and ordering the GAL to investigate the parents' relatives for potential placement of the children. On July 30, 2004, when the parties reconvened to continue the custody modification hearing, the GAL recommended that the children reside with their paternal aunt, Lisa S., in Maine.

Jeffrey G. asserts that the hearing was never completed and that both he and Janette P. were denied the opportunity to complete their testimony and fully present evidence pertaining to their case. Nevertheless, it is undisputed that, in light of the GAL's recommendation, the parents reached another consent agreement, which the trial court approved, whereby the parents shared joint legal custody and Jeffrey G. assumed primary physical custody of the children.

On October 1, 2004, the GAL filed an "Interim Case Update" with the court "to document the failure of co-parenting and communication between Janette and Jeffrey." In addition to detailing several incidents of concern to the GAL, the report concluded, "[t]he children deserve better than their parents are willing and able to provide at this time," and recommended that the children be placed with Lisa S. "for the school year." The court conducted a review hearing on October 8, 2004, at which the GAL reported that both parents' circumstances had changed

since the July 30, 2004 stipulation, resulting in their noncompliance with the terms of that agreement. The GAL also described a proposed custodial change, to which the parents agreed, granting Janette P. primary physical custody of the children. However, recognizing that the proposed change would be the fourth custodial change in four years, the trial court determined that "[t]he children will reside with their aunt in [Maine], end of discussion." The court further stated:

> You can come back in a year after the parents have been through co-parenting classes, after [J.G.] has received the appropriate special education services he's to receive. Parents can pay. This is outrageous what the two of you are doing to your children. We have done this before and before, and again and again and again and again. That will be my order. This hearing's over. Thank you.

After denying Jeffrey G.'s counsel's repeated requests to be heard, the court further stated:

> I've heard this case. I've heard it every two weeks for the last two months. I'm not going to hear it again. These children are in grave danger remaining with their parents. We've already heard testimony from the therapist how damaged they are as a result of their parents [sic] behavior. I will not allow it to continue. The hearing is over.

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The hearing lasted seventeen minutes. The court denied both counsels' requests to reconsider.

On October 13, 2004, prior to the proposed custodial change, the trial court granted the GAL's ex parte request that the two children be placed in Lisa S.' immediate custody. By order dated October 15, 2004, the court found that "[r]esiding with either parent is detrimental to these children," and granted physical custody to Lisa S. and supervised visitation to both parents.

The petitioner appeals the trial court's custody determination, arguing that the trial court: (1) did not have jurisdiction to grant custody of the children to Lisa S. under RSA 458:17; and (2) violated his fundamental procedural due process rights when it denied him custody of the children without following the requisite procedures set forth in RSA chapter 169-C.

Lisa S. urges us to uphold the trial court's custody determination, arguing that the trial court properly considered the best interests of the children when it: (1) found that the children were in danger if left in the care of their parents; and (2) required continuing protection for the children by limiting the parents to supervised visits.

We also permitted the filing of an amicus curiae brief, which argues that the trial court properly considered the best interests of the children when it found that the parents were unfit and granted physical custody to Lisa S. It contends the trial court's custody determination comports with precedent set in Troxel v. Granville, 530 U.S. 57 (2000) (plurality opinion).

Appendix D

The right of biological and adoptive parents to raise and care for their children is a fundamental liberty interest protected by Part I, Article 2 of the New Hampshire Constitution. In the Matter of Nelson & Horsley, 149 N.H. 545, 547 (2003).

Similarly, the Due Process Clause of the Fourteenth Amendment to the United States Constitution protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children. Troxel, 530 U.S. at 66. This fundamental right is not absolute, but is subordinate to the State's competing parens patriae power to intervene if a child's welfare is at stake. Preston v. Mercieri, 133 N.H. 36, 40 (1990). We first address this issue under the State Constitution and cite federal opinions for guidance only. State v. Ball, 124 N.H. 226, 231-33 (1983).

The superior court's jurisdiction to award custody is purely statutory, and the best interests of the child guide all custody decisions in New Hampshire. Bodwell v. Brooks, 141 N.H. 508, 512 (1996). RSA 458:17 vests the superior court with authority to make child custody determinations in the case of divorce or annulment. RSA 458:17, I (2004). Thus, in the context of a divorce, the superior court "may interfere with parental rights to determine a child's best interests as between two fit parents." Nelson, 149 N.H. at 548 (emphasis added); see Troxel, 530 U.S. at 58 (recognizing a presumption that a fit parent is acting in the best interests of the child). RSA 458:17, VI identifies only two classes of third parties, grandparents and stepparents, who may be awarded custody "if the court determines that such an award is in the best interests of the child." See In

the Matter of R.A. & J.M., ___ N.H. ___, ___ (decided December 30, 2005) (Broderick, C.J.) (construing RSA 458:17, VI as authorizing superior court to grant custody to stepparent or grandparent in appropriate circumstances). We have narrowly interpreted RSA 458:17, VI to protect the fundamental liberty interests of biological and adoptive parents while balancing the State's interest in protecting the welfare of children within its jurisdiction. See id. at Therefore, in the context of a custody determination, unless a third party is either a grandparent or stepparent who has established in loco parentis status, he or she may not obtain custody of the child over a biological or adoptive parent. See id.; RSA 458:17, VI.

The fundamental liberty interest of biological and adoptive parents in the care, custody and management of their children "does not evaporate simply because they have not been model parents." In re Bill F., 145 N.H. 267, 275 (2000). "Absent a showing of specific harm to the children, growing up in a so-called disadvantaged home is not a sufficient basis for coercive intervention." Id. (quotations and citation omitted). Therefore, even though their parenting skills are less than ideal, biological and adoptive parents are presumed to be fit parents, see Troxel, 530 U.S. at 58, until they are found to be unfit under either RSA chapter 169-C (abuse and neglect proceedings) or RSA chapter 170-C (termination of parental rights).

The Child Protection Act, RSA chapter 169-C, governs custody determinations in child abuse and neglect proceedings and enumerates detailed procedures to be followed when any interested party asserts that a child has been abused or neglected. Under this statute, the welfare of

an allegedly abused or neglected child is of paramount importance. See In re Preisendorfer, 143 N.H. 50, 54 (1998). However, in addition to "provid[ing] protection to children whose life, health or welfare is endangered," the purpose of this chapter is also "to establish a judicial framework to protect the rights of all parties involved in the adjudication of child abuse or neglect cases." RSA 169-C:2, I (2002) (emphasis added). Thus, when appropriate, and pursuant to enumerated procedures in the statute, RSA chapter 169-C provides for emergency interim relief, see RSA 169-C:6-a, as well as temporary placement with relatives or other appropriate third parties. See RSA 169-C:19, I & III.

The instant case initially arose in the context of a divorce proceeding between two parents who had not been found unfit and, therefore, the trial court had jurisdiction to determine custody of the children pursuant to RSA 458:17. However, Lisa S. is not a potential custodial recipient named in RSA 458:17, VI, and, therefore, the court did not have authority to grant custody to her in this context.

Because the State Constitution is at least as protective of individual liberties in these circumstances as the Federal Constitution, see In re Tracy M., 137 N.H. 119, 122 (1993), we reach the same result under the Federal Constitution.

Accordingly, we reverse the trial court's custody determination and remand this case to the trial court for further proceedings consistent with this opinion.

Reversed and remanded.

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BRODERICK, C.J., concurred; DALIANIS and DUGGAN, JJ., concurred in part and dissented in part.

DALIANIS and DUGGAN, JJ., concurring in part and dissenting in part. Though we concur in the result, we disagree with the majority's holding that: Therefore, in the context of a custody determination, unless a third party is either a grandparent or stepparent who has established in loco parentis status, he or she may not obtain custody of the child over a biological or adoptive parent.

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CLERKS
NOTICE OF HEARING - MARTIAL
SALEM DISTRICT COURT
FAMILY DIVISION AT SALEM
DATED DECEMBER 5, 2005
IN DOCKET NO. 1999-M-0183
IN THE MATTER OF
JEFFREY M. GRAY AND JANETTE L. GRAY

THE STATE OF NEW HAMPSHIRE
Salem Family Division
35 Geremonty Drive
Salem, NH 03079
603 893-2084

NOTICE OF HEARING - MARTIAL

JEFFREY M. GRAY
P O BOX 375
SALEM NH 03079

1999-M-0183
In the Matter of Jeffrey M. Gray and Janette L. Gray

The above-reference case has been scheduled for the following;

REVIEW HEARING
Date: MARCH 27, 2006
Time:1:00 pm
Location: SALEM FAMILY DIVISION COURTROOM 2
35 Geremonty Drive, SALEM, NH 03079
Time allotted for this hearing: 30 min

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Please advise immediately if this is not sufficient.

Please advise clients, witnesses, and others that it is a class B felony to carry a firearm or other deadly weapon as defined in RSA 625:11, V in a courtroom or area used by a court.

All requests for recordings must be made within 10 days of the date of this notice

BY ORDER OF THE FAMILY DIVISION

Date: 12/05/05 /s/ Sherry L. Bisson
Regional Clerk

cc: Salem Family Division
Mary Ann Callanan, Esquire
Janette L. Silva Piela
Dept. of H& HS
Scott & Lisa Sorenson
NH Supreme Court
Division of Human Services-Salem

Appendix D

ORDER OF THE SUPREME COURT OF NEW HAMPSHIRE DATED AUGUST 25, 2005 IN CASE NO. 2004-0738 *IN THE MATTER OF JEFFREY M. GRAY AND JANETTE L. GRAY*

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0738, In the Matter of Jeffrey Gray and Janette Gray., the court on August 25, 2005, issued the following order:

Janette Silva filed a notice of appeal with this court seeking review of the October 15, 2004 order of the Family Division at Salem. This order placed the parties children with a paternal aunt, Lisa Sorenson. On or before Monday, September 12, 2005, Ms. Sorenson may file a brief addressing the issues raised in this appeal. A copy of the notice of appeal and the briefs filed in this case along with a copy of Supreme Court Rule 16, shall be provided to Ms. Sorenson with her copy of this order.

This case remains scheduled for oral argument on September 29, 2005..

This order is entered by a single justice (Duggan, J). See Rule 21(7).

Eileen Fox,
Clerk

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Distribution:
Judicial Branch-Family Division at
Salem#1999-M0183
Ms. Janette Silva
Mr. Jeffrey Gray
Mary Ann Callanan, Esquire
Mary Ann Pilkington-Casey, Esquire
Ms. Lisa Sorenson
File

Appendix D

ORDER OF
SALEM DISTRICT COURT
FAMILY DIVISION AT SALEM
DATED MARCH 15, 2005
IN DOCKET NO. 1999-M-0183
IN THE MATTER OF
JEFFREY M. GRAY AND JANETTE L. GRAY

THE STATE OF NEW HAMPSHIRE
Judicial Branch-Family Division
Rockingham County Location Salem

Docket #1999-M-0183
ORDER

IN THE MATTER OF:
Jeffrey M. Gray and Janette L. Gray

1. Motion to Recuse is denied.

2. The issues of placement of the children and child support ordered at the last hearing have been appealed to the NH Supreme Court. There has been no stay of any of the lower Court's Order. Consequently, as Temporary Orders, those Orders are hereby reaffirmed.

3. The prior Court Orders have not changed the legal custody of the children. The parties and paternal aunt appear to have joint legal custody. The children reside with the paternal aunt and there has arisen a dispute between the Petitioner and the aunt regarding counseling and medical care for the children. Given the legal status of the children, this Court finds that major

health related decisions must be made in consultation with one another. Petitioner has arranged counseling for the children and that counseling shall occur.

4. All routine medical and dental appointments for the children shall be made by the paternal aunt. She shall inform each party of same. Neither party shall interfere with the children's appointments.

5. All other orders shall remain in effect.

Date: 3/14/05 /s/ Bruce F. DalPra
Master

Master's recommendation is approved and ordered.

Date: 3-15-05 /s/ John A. Korbey
Judge

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ORDER OF
SALEM DISTRICT COURT
FAMILY DIVISION AT SALEM
DATED OCTOBER 15, 2004
IN DOCKET NO. 1999-M-0183
IN THE MATTER OF
JEFFREY M. GRAY AND JANETTE L. GRAY

THE STATE OF NEW HAMPSHIRE
Judicial Branch-Family Division
Rockingham County
Salem New Hampshire

Dockett#1999-M-0183
IN THE MATTER OF:
Jeffrey M. Gray and Janette L. Gray

ORDER

This matter came before the court for a review hearing requested by the Court to determine the status of the children.

Briefly, the parties were divorced after a three day contested hearing on August 7, 2002. At the time of the divorce, Jeffrey Gray was residing in Salem, New Hampshire and Janette Gray was residing in Fairhaven, MA. There were two children born to this marriage, Leeanna, born 7/18/97 and Jonathon, born 4/22/96. Since the parties' separation, custody of the children has gone back and forth between the parents, at least three times.

In June, 2004, this court held a two day evidentiary hearing on modification of custody. Of significance at that

hearing, wa[illegible] testimony of the children's therapists. The therapist was focused on the children's needs and well being. Her testimony was compelling and her concern was for the trauma these children have experience as a result of their parents behavior, lack of parenting skills and acrimony. In light of such, the court requested the Guardian Ad Litem to investigate relatives of both parents for potential placement of the children. Aunt Lisa Sorenson, father's sister, was ready, willing and able to care for the children.

The hearing was scheduled for July 30, 2004. The Guardian Ad Litem recommended the children reside with Aunt Lisa. In light of the Guardian's recommendation, the parties were able to reach an agreement. The agreement laid out a plan whereby the children would reside with their father (another custodial change), attend school in Salem, be enrolled in counseling and mom would move to Salem. The parties also had an appointment wit the school after court that day to sep up special education services for Jonathon which he never received. The court approved the agreement on July 30, 2004. In the meantime, the children visited with Aunt Lisa for three weeks.

The Guardian Ad Litem notified the court and requested an emergency hearing. Apparently, the agreement between the parties and requested an emergency hearing. Apparently, the agreement the parties previously entered into was no working and Mom was not moving to Salem, NH. A hearing was held August 26, 2004, and again the parties were able to reach an agreement. The Guardian Ad Litem agreed to the stipulation. The court

approved the stipulation in that it appeared workable and in the best interest of the children.

On October 8, 2004, the court held a review hearing based on the Guardian Ad Litem's request. At said hearing. The Father and the children where now living in a local hotel. The guardian testified that the Father, who was living with the children and his girlfriend, was removed from the girlfriend's home after an altercation. The children were present. Further, the Salem School District notified the Guardian Ad Litem that the school was contacted by a school in the district where the mother resides, as mother was going to take custody of the children. Her plan was to enroll the children in Assonet, Ma, where she was planning on moving soon.

Each day the emotional, physical and psychological health of these children has become more traumatized. Residing with either parent is detrimental to these children. The Guardian Ad Litem has investigated Lisa Sorenson (Aunt Lisa) and finds she would a very appropriated custodian for these children. She and the children have a close relationship. Her home easily accommodates two children. She is willing to open her home to both parents.

The children shall be placed with Lisa Sorenson. The parents shall have no unsupervised visitation. The visitation schedule shall be set up by the Guardian Ad Litem. Both parties shall pay child support to Lisa Sorenson as per the USO attached hereto.

10/15/04 /s/ P DiMeo
Date: Presiding Justice

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DECREE OF DIVORCE PETITONERS FINDINGS OF FACT AND RULINGS OF LAW SALEM DISTRICT COURT FAMILY DIVISION AT SALEM DATED AUGUST 7, 2002 IN DOCKET NO. 1999-M-0183 *IN THE MATTER OF JEFFREY M. GRAY AND JANETTE L. GRAY*

THE STATE OF NEW HAMPSHIRE
Judicial Branch

ROCKINGHAM, SS — FAMILY DIVISION
1999-M-0183 — AT SALEM

IN THE MATTER OF:
JEFFREY M. GRAY AND JANETTE L. GRAY

DECREE OF DIVORCE

Following a final hearing on the merits on April 26, 2002, April 29, 2002 and August 2, 2002, at which both parties appeared with counsel and the Guardian ad Litem appeared, the Court makes the following Final Decree:

Divorce decreed. Cause: irreconcilable differences which have caused a irremediable breakdown of the marriage.

Dismissal of Cross-Petition – Jeffrey Gray's Petition for Legal Separation is dismissed.

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The Respondent's Proposed Decree as amended and the provisions here in from the Supplemental Final Report of the Guardian ad Litem are approved and incorporated as part of this Decree.

It is strongly recommended that Jeffrey enroll in individual therapy until released by the counselor.

It is strongly recommended that Janette continue in individual therapy until released by the counselor.

It is recommended that the children continue in therapy with an age-appropriate therapist conversant with the children's special needs, if any.

Neither party shall remove the minor children from the New England States (Maine, New Hampshire, Vermont, Massachusetts, Connecticut, and Rhode Island) absent prior Court Order. This shall not prevent the parties from reaching a written agreement, which agreement shall be filed with and approved by the Court prior to the children's removal.

Pursuant to RSA 458-A:3, I(b), New Hampshire shall be deemed the children's home state for purposes of any litigation on custody or visitation.

The parties shall communicate information to each other concerning the children's needs and performances in different areas, including education and medical information and the children's activities, as described below:

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Each party shall inform the other party as soon as possible of all school, sporting and other special activity notices and cooperate in the children's consistent attendance at such events;

Each party shall notify the other, whether in person or by leaving a detailed message on the other's answering machine, of any medical care received by the children, including at minimum, the doctor treating the child, the diagnosis, and treatment, if any. Each parent shall upon transfer of the child provide any medication prescribed for the child in sufficient quantity to maintain medication during the others custodial period;

Each party shall always keep the other parent informed of his or her actual residence address, mailing address if different, home and work telephone numbers, with written notice of any changes within forty eight (48) hours of the change;

Neither party shall schedule activities for the children during the other party's custodial periods without the other party's prior agreement, with the following exceptions: previously scheduled school events, athletic events and extracurricular or enrichment events associated with their extracurricular and enrichment activities;

Neither party shall say or do anything in the presence or hearing of the children that would in any way diminish the children's love or affection for the other party or permit others to do the same;

All financial and related communications concerning the children, between the parties' shall occur at a time

when the children are not present and therefore, shall not occur at times of exchanges of the children or during telephone visits with the children.

The Court denies the following Petitioner's Proposed Findings of Fact and Rulings of Law: 8, 10-12, 16, 19, 24, 27, 28, 30, 35, 38-41, 47, 48, 52-54, 57 and 58.

All other request are granted

Date: 8/7/02 /s/Gerald Taube Presiding Justice

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THE STATE OF NEW HAMPSHIRE
Judicial Branch-Family Division
Rockingham County
Salem New Hampshire

Dockett#1999-M-0183

IN THE MATTER OF:

Jeffrey M. Gray and Janette L. Gray

PROPOSED FINDINGS OF FACT
AND
RULINGS OF LAW

NOW COMES the Petitioner, Jeffrey Gray, through his Attorney, James C. McCoy, III and submits these PROPOSED FINDINGS OF FACT AND RULINGS OF LAW;

FINDINGS OF FACT

1. The parties were married on November 4, 1995 in Biddeford, Maine;

2. The parties have two minor children, Jonathon M. Gray D.O.B. April 22, 1996 and Leeanna L. Gray D.O.B. July 18, 1997;

3. Irreconcilable differences have arisen between the parties which have cause the irretrievable breakdown of the parties' marriage;

4. On or about August 10, 1998 Mrs. Gray had filed a

domestic violence action in Hillsborough County, docket number 98-M-1154;

5. Mr. Gray filed a Petition for Legal Separation, docket number 98-M-1324, on or about September 17, 1998;

6. A hearing was held on Mrs. Gray's domestic violence petition, and final orders were issued in this matter on or about September 4, 1998;

7. The Court Order issued on September 4, 1998 incorporated an agreement between Mr. Gray and Mrs. Gray that they would attempt to work out a mutally agreeable visitation schedule;

8. Rather than agree to a schedule as the she agreed and the court ordered, Mrs. Gray took the parties children to California, where she and her children resided with her sister;

9. Mrs. Gray left for California on or about September 16, 1998;

10. Mrs. Gray returned from California on or about December 5, 1998;

11. Prior to her departure to California, Mrs. Gray had prevented Mr. Gray from seeing his children from the date that she initiated the domestic violence action on or about August 10, 1998;

12. Mrs. Gray's actions prevented Mr. Gray from seeing his children for a period of 17 weeks;

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13. The Court Order issued in the domestic violence action did not contain any provision permitting Mrs. Gray to relocate the children to a different state;

14. Mrs. Gray never obtained Mr. Gray's approval for the move;

15. Mrs. Gray never obtained the Court's approval for the move;

16. Mrs. Gray engaged in a pattern of deception on moving her children to California without Mr. Gray's permission;

17. On September 16th, 1999 Janette Gray filed a complaint requesting an Abuse Prevention Oder in Massachusetts under M.G.L. 209-A, and was issued such an order at 12:32 pm that same day;

18. This order suspended Mr. Gray's right to visit with his children until further order of the Massachusetts court;

19. Mrs. Gray knew of this order during the New Hampshire hearing on September 17, 1999 hearing and never once mentioned it to the judge, Mr. Gray or Mr. Gray's counsel;

20. On September 17th, 1999, a hearing was held on the Respondent, Janette Gray's petition for a domestic relations restraining order, under docket number 199-D-104;

21. At the same time, the Petitioner under this docket

number, Jeffrey Gray, filed a Petition for Legal Separation, under the above captioned docket number;

22. Janette Gray was served with notice of said Petition on September 17th, 1999.

23. During the September 17th hearing, Mr. Gray asked the Court to dismiss the domestic violence order and to issue reciprocal restraining orders under the action for legal separation;

24. At no time did Mrs. Gray indicate that she had sought a restraining order in the Commonwealth of Massachusetts under M.G.L. 209-A, and that as a result, that the Commonwealth of Massachusetts has suspended Mr. Gray's right to visit with his children until further order of the Massachusetts Probate and Family Court;

25. Pursuant to this Court's suggestion in the domestic violence hearing of September 17, 1999, the parties reached a visitation agreement which granted Mr. Gray visitation with the parties children on the following day;

26. To exercise his visit with his children, Mr. Gray traveled to the Fairhaven, Massachusetts, to pick up his children;

27. As a result of the Massachusetts order, Mr. Gray was denied visitation with his children by the Fairhaven Police after having driven two hours to pick up his children at the Police Station as the parties agreed on

September 17th;

28. Mrs. Gray's failure to notify the judge, Mr. Gray and Mr. Gray's counsel of the Massachusetts restraining order was an act of deception;

29. Mrs. Gray's 1999 domestic violence restraining petition was dismissed on or about September 17 based upon "the credibility of the parties";

30. In response to the denial of his visitation and out of fear that Mrs. Gray might again flee with the children, Mr. Gray filed an Ex Parte Motion for Temporary Custody of the children;

31. This motion was granted by this Court on or about September 21, 1999;

32. On or about September 22, 1999, Mr. Gray obtained physical custody of his children;

33. Mr. Gray has been the primary physical custodian of the children since September 22, 1999;

34. Under Mr. Gray's custody, the children have received appropriate medial care;

35. Under Mr. Gray's custody, the children have received appropriate housing;

36. Under Mr. Gray's custody, the children have received appropriate day care;

37. Under Mr. Gray's custody, the children have received

appropriate schooling;

38. Under Mr. Gray's custody, the children have received appropriate parental care;

39. Counseling reports regarding the children indicate that they have a good relationship with Mr. Gray;

40. The counseling reports do not indicate that the children are fearful of Mr. Gray;

41. The counseling reports refer to the Gray children as healthy;

42. Mrs. Gray continues to live in southeastern Massachusetts;

43. Mrs. Gray's chosen location for her residence has made the coordination of visits with the children difficult;

44. Mr. Gray, throughout this matter, has provided the vast majority of transportation so that Mrs. Gray could exercise her visitation;

45. Mrs. Gray has had several residences during the pendency of this mater;

46. Mrs. Gray has recently established a new residence, and has refused to provide her phone number and address to Mr. Gray;

47. At the request of Mrs. Gray and of others, Mr.Gray has been investigated by the Division of Children,

Youth and Families (DCYF) on five occasions since 1996;

48. Each and every instance resulted in a DCYF either deciding that it need not open a case or a conclusion that the allegations were unfounded;

49. The Guardian Ad Litem (GAL) conducted a thorough investigation into the matters assigned to her by this court;

50. The GAL's report concludes that much of lack of Mrs. Gray's contact with her children "may be laid at Janette's feet, as she has, of her own violation left the state where her children reside and has consistently left all of the transportation duties to Jeffrey despite the length of the round trip required (approximately 51/2 hours);

51. The GAL reports that the children do not seem to be frightened of Mr. Gray in "any way";

52. The GAL does not believe that Mr. Gray has been physically abusive to Mr. Gray;

53. The GAL recommends that the parties be granted joint legal custody;

54. The GAL recommends that Mr. Gray be granted primary physical custody;

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RULINGS OF LAW

55. Mr. Gray has met his burden of proof by a preponderance of the evidence that irreconcilable differences caused the breakdown of his marriage to Janette Gray;

56. Mrs. Gray has failed to meet her burden of proof by a preponderance that Mr. Gray has engaged in acts of extreme cruelty, therefore, Mrs. Gray's fault based claim for divorce is dismissed;

57. Mr. Gray has demonstrated by a preponderance of the evidence that it would be in the best interests of the children to reside with him as the primary physical custodian;

58. Mrs. Gray has failed to demonstrate by a preponderance that it would be in the best interest of the children to reside with her as the primary physical custodian;

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59. New Hampshire is the children's home state within the meaning of RSA 458-A:3 (New Hampshire's version of the Uniform Child Custody Jurisdiction Act) and 28 U.S.C. §1738(b)(4), the Federal Parental Kidnapping Prevention Act;

Respectfully submitted
Jeffrey Gray
By His Attorney

/s/ James C. McCoy, III
Londonderry Professional Park
80 Nashua Rd, P.O. Box 904
Londonderry, NH 03053
(603) 421-0680

CERTIFICATION

I hereby certify that a copy of the foregoing Proposed Findings of Fact and Rulings of Law was hand delivered to Catherine P. McKay, Esq this 26th day of April, 2002.

/s/ James C. McCoy, III

The Court denies the following Requests: 8, 10, 11, 12, 16, 19, 24, 27, 28, 30, 35, 38-41, 47, 48, 52, 53, 54, 57, 58. All other requests are granted.

/s/ Gerald Taube 8 / 7 / 02
Presiding Justice

Appendix D

TEMPORARY DECREE
LEGAL SEPERATION
SALEM DISTRICT COURT
FAMILY DIVISION AT SALEM
DATED OCTOBER 28, 1999
IN DOCKET NO. 1999-M-0183
IN THE MATTER OF
JEFFREY GRAY AND JANETTE GRAY

THE STATE OF NEW HAMPSHIRE
Judicial Branch – Family Division

IN THE MATTER OF:
JEFFREY M. GRAY AND JANETTE L. GRAY

Case No. 1999-M-0183

TEMPORARY DECREE

1. GUARDIAN AD LITEM: No appointment is necessary at this time.

2. CUSTODY:

A. Legal: The parties are awarded joint temporary legal custody of their minor children. The parties further agree that it is of paramount importance for each of them to remain involved in the major parental decisions and guidance of the child, for each child to feel affection and respect for each parent, and for each parent to foster and nurture in the child respect and affection for each parent. Accordingly, the parties agree to keep the other informed of the academic, physical, emotional and social status and activities of the child. Each may, without the permission of

the other, review all school, medical, dental and other reports or communications regarding the health or welfare of the child and consult with the individuals who provide medical, psychological, dental or educational services to the child. Each may give authorization for providing emergency services to the child. Each may also exercise sole authority and responsibility for the decisions concerning the daily living needs, cares and activities of the child when in his or her physical custody. The parties additionally agree to consult each other about significant issues concerning the welfare of the child, including but not limited to the child's medical, mental health, dental treatment, educational choices and religious upbringing:

B. Physical: Jeffrey Gray is awarded temporary primary custody of the parties minor children subject to Janette Gray's reasonable visitation as established herein;

3. VISITATION: Due to the strong possibility of flight, all visitations by Janette Gray shall be supervised until further order of the Court. Janette Gray with the cooperation of Jeffrey Gray and his counsel shall agree upon an acceptable visitation schedule.

4. UNIFORM SUPPORT ORDER: A Uniform Support (USO) is being filed contemporaneously and is incorporated herein by reference;

5. ALIMONY: None is awarded at this time.

6. HEALTH INSURANCE FOR SPOUSE: Jeffrey Gray shall be responsible for providing health and dental insurance for the children of the parties and for Janette Gray until she is able to provide her own or until a Final

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Decree stating otherwise is issued, whichever occurs first. Each party shall be responsible for his or her own uninsured medical and dental expenses; Jeffrey Gray shall be responsible for the uninsured medical and dental expenses of the children of the parties.

7. LIFE INSURANCE. Neither party has life insurance at this time and none is ordered.

8. MOTOR VEHICLES: Each party is temporarily awarded the motor vehicle in his or her possession, and shall be solely responsible for any and all costs of operation, including but not limited to monthly payments, maintenance costs and registration fees;

9. FURNITURE AND OTHER PERSONAL PROPERTY: The parties are awarded the personal property already in his or her possession.

10. PENSIONS AND OTHER TAX DEFERRED ASSETS: Not applicable.

11. OTHER INTANGIVLE PERSONAL PROPERTY: Not applicable.

12. BUSINESS INTERESTS: Not applicable.

13. ALLOCATION OF DEBT: Each party is solely responsible for any and all debts he or she insures after the date of July 16, 1999, and shall indemnify and hold the other harmless for any claims which may arise form said debts.

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14. MARITAL HOMESTEAD: Jeffrey Gray shall be temporarily awarded sole use of the apartment in which the parties resided. He shall be solely responsible for payment of the monthly rent.

15. OTHER REAL PROPERTY: Not applicable.

16. RESTRAINTS AGAINST PROPERTIES: Each party is prohibited from selling, transferring, encumbering, hypothecating, concealing or in any manner whatsoever disposing of any property, real or personal, belonging to either or both except as follows:

A. By prior written agreement of the parties;

B. For reasonable and necessary living expenses;

C. In the ordinary course of business;

D. By Order of this Court;

17. RESTRAINTS AGAINST THE PERSON: The parties must be able to communicate on matters pertaining to the welfare of their children and to coordinate custodial exchanges. The parties are further mutually restrained from harassing, intimidating or threatening the other or interfering with the liberty or the other;

18. OTHER REQUESTS:

A. Jeffrey Gray shall be entitled to the dependent deduction for income tax purposes for 1999.

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19. KEYS: Janette Gray shall surrender all keys to Jeffrey Gray's residence and she shall not retain any duplications.

October 28, 1999 /s/ Urville J. Beaumont
Urville J. Beaumont, Presiding Justice